

Kerala Gazette No. 47 dated 25th November 2008.  
PART IA



GOVERNMENT OF KERALA

**Election (General) Department**

NOTIFICATION

No. 1802/EL4/2008/Elec.      *Dated, Thiruvananthapuram, 8th August 2008.*

The Election Commission of India's Notification No. 82/KL-LA/(2/06)/08 dated 19th June 2008 is hereby republished.

By order,

NALINI NETTO,

*Chief Electoral Officer and  
Principal Secretary to Government.*

**ELECTION COMMISSION OF INDIA**

(Nirvachan Sadan, Ashoka Road, New Delhi-110 001)

*Dated:* 19th June, 2008.  
29 Jyaistha 1930 (Saka)

**NOTIFICATION**

**No. 82/KL-LA/(2/2006)/2008.**— In pursuance of section 106 b of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Kerala dated 6-5-2008 in Election Petition No. 2 of 2006.

By order,  
(Sd.)  
TAPAS KUMAR,  
*Principal Secretary.*

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

*Present*

**THE HONOURABLE MR. JUSTICE THOTTATHIL B. RADHAKRISHNAN**

Tuesday, the 6th May 2008/16th Vaisakha 1930

[ El. Pet. No. 2 of 2006 ]

*Petitioner:*

A. Narayanan,  
s/o Ayyappan,  
Aged 51 years,  
Valayil House,  
Kakkoor P. O.,  
Koothattukulam,  
Ernakulam Dist.

By Adv. Sri K. Ramakumar,  
Sri T. Ramprasad Unni  
Sri A. Sameer  
Smt. Saritha David Chunkath  
Sri V. Binoy Ram  
Sri Issac Ninan

*Respondent:*

Sri M. J. Jacob,  
 s/o Joseph,  
 Aged 61 years,  
 Muttapallil House,  
 Oliyappuram P. O.,  
 Koothattukulam.

*Persons to whom Notices under Proviso to Section 99 (1) of the R.P. Act  
 were issued:*

1. P. G. Manu,  
 s/o Gopalan,  
 Padmalayam House,  
 Mamalassery P. O.,  
 Ramamangalam.
2. O. N. Vijayan,  
 s/o Narayanan,  
 Oolakunneel House,  
 Mannathur P. O.,  
 Thirumarady Village,  
 Ernakulam District.
3. Jinson V. Paul,  
 Vadakkemechariyil House,  
 Mamalassery P. O.,  
 Ramanagalam,  
 Ernakulam District.

By Adv. Sri G. Janardhana Kurup (SR)

Sri K. Surendra Mohan  
 Sri K. Paul Kuriakose  
 Sri John K. George  
 Smt. S. Sulochana  
 Sri P. K. Varghese  
 Sri B. Vinod  
 Sri K. S. Arun Kumar  
 Sri E. C. Bineesh  
 Sri N. K. Shyju

This Election Petition having been finally heard on 17-4-2008, the Court on 6-5-2008 delivered the following.

THOTTATHIL B. RADHAKRISHNAN, J.

[E.P. No. 2 OF 2006]

Dated this the 6th day of May, 2008

ORDER

1. This election petition is filed challenging the election of the respondent from No.79 piravom LA constituency to be a member of the Kerala Legislative Assembly, the polling for which was held on 29-4-2006. The election petitioner is a voter of that constituency. Going by the petitioner's version, the respondent Sri.M.J.Jacob (R.W.4) secured 52903 votes as against his rival candidate Sri T.M.Jacob (P.W.30), who secured 47753 votes.
2. The petitioner challenges the election of the respondent on the ground that a corrupt practice as defined in Section 123 (4) of the Representation of the people Act, 1951, hereinafter referred to as "the Act", has been committed by the publication of Ext. P1 and that such publication has been made by the respondent's election agent (R.W.1) and by other persons with the consent of the returned candidate, the respondent or his election agent; that the statements of facts in Ext. P1 made in relation to the personal character or conduct of P.W.30, are false and that the publisher of Ext. P1 either believes them to be false or does not believe them to be true and that the said statements were reasonably calculated to prejudice the prospects of P. W. 30 in the election. Thus, the plea is, pithily, that the election is liable to be declared void under Section 100 (1) (b) of the Act read with section 123 (4 ) thereof.
3. It is stated in paragraph 2 of the election petition that the issuance of Ext.P1 is part of a systematic campaign of personal vilification of P.W.30 and that Ext.P1 notice contains false personal accusations and references, which are wholly untrue. The said notice allegedly contains description of P.W.30 as a cheat and as a person deceiving the people and that he is a fake. Ext.P1, according to the petitioner, also contains false allegation accusing P.W.30 of complicity in shielding an accused in a case of an attempt to murder. It is pleaded that R.W.1, the election agent of the respondent knew very well that the accusations made against P.W.30 in Ext. P1 are false. It is also alleged that R. W. 1, the election agent had every reason to believe that such statements are false. Paragraph 5 of the election petition enumerates various localities at which Ext. P1 pamphlets were distributed. It also enumerates

the different persons who were allegedly involved in such distribution and also persons who had either witnessed such distribution or received the notices. It is alleged that the election of the respondent is liable to be declared void by reason of the aforesaid corrupt practice committed by R. W. 1, the election agent of the respondent and other agents who are allegedly involved in distribution of the notices etc., with the consent of R.W. 1, the election agent.

4. The respondent filed written statement contending that his mode of campaign was by travelling the length and breadth of the constituency and meeting the electors personally and circulating Ext. R2 pamphlet requesting for votes in his favour. He contended that he was not involved in the printing and publication of posters, leaflets or other publicity materials other than publication of Ext. R2, while other such materials were designed, printed and distributed by various organisations of the LDF in the name of the Convener and Secretary, LDF Election Committee, Piravom Legislative Assembly Constituency and that the respondent had no role in any such activity and he was not aware of the printing or circulation of any such leaflet. It is contended that he had not consented to the printing and circulation of any leaflet or other publicity material and that his election agent or his polling agents have also not drafted or distributed any publicity material, including the alleged offensive publication, Ext. P1.
5. The respondent further pleaded that Ext. P1 would show that it has been issued by the Left Democratic Youth Front (LDYF), Piravom Mandalam Committee. He further averred that Ext. P1 was issued in reply to Ext. R1 pamphlet issued by the Convener, Election Committee, United Democratic Front, Piravom Assembly Constituency and that Ext. P1 was issued by the LDYF in answer to the claims made in Ext. R1. He, however, pleaded that Ext. P1 was not prepared with either his consent or knowledge or with the consent or knowledge of his election agent. The respondent also denied that Ext. P1 notice contains personal accusations, which are false. The respondent has averred that the statements in Ext. P1 are not accusations against the private or personal character of P.W. 30. The respondent has further averred that Exts.R10 and R11 would show that there was an attempt to murder some persons who had left the political party of P.W. 30. According to the respondent, Sri Scaria, the second accused in that case was a member of the personal staff of P.W. 30, while he was a minister and that the said Sri Scaria was not arrested by the police, though his whereabouts were known to all. The respondent also disputed the alleged distribution of Ext. P1, with his consent.

6. During the course of the case, the respondent through counsel raised a preliminary objection that the verification of the election petition and the affidavit filed by the election petitioner in Form 25 in terms of Rule 94A of the Conduct of Election Rules, 1961 read with Section 83 of the Act are defective and that the election petition is liable to be rejected. On such objection being taken, the learned counsel for the petitioner sought for an opportunity to cure such defect. The opportunity granted following such request was utilised and yet another affidavit in Form 25 stands filed afresh which cures any defect regarding the verification and also the affidavit in Form 25 that was tendered along with the election petition.
7. On the basis of the pleadings on record, the following issues were settled for trial:
  - (i) Is the petition maintainable?
  - (ii) Do the allegations constitute a corrupt practice for the purpose of the Representation of the People Act, 1951? If so, has it been proved?
  - (iii) If Issue No. II is answered in the affirmative, has the result of the election of the respondent been materially affected by such corrupt practice?
  - (iv) Is the election of the respondent liable to be set aside as prayed for?
  - (v) What shall be the order as to costs ?
8. After recording the documentary and oral evidence tendered by P.W.1—the election petitioner, P.W. 2 to P.W. 31, R.W. 1 to R.W. 3 and the respondent as R.W. 4, an order was issued on 2-2-2007, directing issuance of notice to R.W.1 Sri O. N. Vijayan, R.W. 2 Sri Jinson V. Paul and R. W. 3 Sri P. G. Manu in terms of the proviso to Section 99 (1) of the Act to show cause why they should not be named in the final order in this election petition as persons who have committed the corrupt practice, as noticed in the said order. Opportunities as are available to them under clause (b) of the proviso to Section 99 (1) were notified to them as available, if they so desire.
9. Pursuant to the aforesaid show cause notices, R.W. 1, R.W. 2 and R.W. 3 entered appearance and filed separate replies. R.W. 1 took the stand that Ext. P1 was not published by the LDF Election Committee and that the contents of Ext. P1 do not affect the personal character or conduct of the contesting candidate. R. Ws . 2 and 3 filed separate replies, taking the stand that Ext. P1 was published by LDYF and that the statements therein were made on the basis of facts which were publicly known.

10. Even while issuing the order dated 2-2-2007, it was noticed that in the event of it being held that Ext. P1 was published by or with the consent of the respondent or R.W. 1, his election agent, Issue No. III as framed, would not survive for consideration as such since the allegations, if established, would otherwise fall pithily under Section 100 (1) (b) of the Act. Accordingly, as per order dated 2-2-2007, Issue No. III was struck off.
11. Pending proceedings on the basis of the notices issued to R.W. 1, R.W. 2 and R.W. 3, the order dated 2-2-2007 was challenged by the respondent before the Hon'ble Supreme Court of India. Ultimately, Civil Appeal No. 1250 of 2007 was disposed of by order dated 20-2-2008, noticing that the contents of the order dated 2-2-2007 are only prima facie findings and the matter has to be proceeded with and decided in accordance with law with reference to Sections 98 and 99, after giving opportunity to the three noticees also, before deciding the matter, finally. The case has accordingly been remitted for final disposal.
12. After the noticees filed their respective replies to the show cause notices, P.W. 30 was again examined on the request of the noticees, as X.W. 1. The Official Report of the Proceedings of the Kerala Legislative Assembly regarding the 12th Session of the 11th Kerala Legislative Assembly, prepared and published under Rule 308 (iii) of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly, was marked as Ext. XI and certain portions of that document were also specifically marked. X.W. 2 to X.W. 5 were examined. R.W. 3 and R.W. 2 were again examined as X.W. 6 and X.W. 7 and R.W.1 again tendered evidence as X.W. 8.
13. Having regard to some of the statements made by P.W. 30 as X.W. 1, the noticees filed applications to call upon the Secretary of the Kerala Legislature to produce the CD versions of the proceedings of the Legislature as regards Ext. XI. The Legislature through the Secretary placed on record that the Kerala Legislative Assembly's Committee on Privileges and Ethics had recommended to the Assembly against the production of the videograph and the Assembly had unanimously accepted the said recommendation. The stand taken in the affidavit dated 3-4-2008 filed by the Secretary of the Kerala Legislative Assembly through the Deputy Secretary was accepted and it was ordered that production of the videograph cannot be insisted or enforced (See order dated 8-4-2008).

14. With the entire materials now on record, the focus of the submissions at the time of final hearing was confined to the question of responsibility of having published Ext. P1 and as to whether Question Nos. 2 and 6 in page 3 of Ext. P1 amount to statements of facts affecting the personal character and conduct of P.W. 30 Sri T. M. Jacob and still further, whether the tail-piece of Ext. P1 containing the exhortation to “recognise the shameless hypocrite of development trickery.....react against the deceiver of the people.....” amounts to a statement of facts affecting the personal character and conduct of P. W. 30, in the setting in which it is placed, referable to Question Nos. 2 and 6 in page 3 of Ext. P1 and as to whether the election is liable to be set aside on grounds referable to Section 100 (1) (b) read with Section 123 (4) of the Act.
15. Barring the effect of the materials placed on record after the order dated 2-2-2007 and the consideration of the submissions on behalf of the noticees, the respondent and the petitioner regarding the appreciation of evidence and the legal issues involved, the assimilation of the materials on record adduced before the order dated 2-2-2007 is not much at variance from what has been recorded in the order dated 2-2-2007. Hence, some of the portions of the order dated 2-2-2007, in so far as they are not at conflict with the views in the order being rendered hereby, have been included, *verbatim*, as they occur in the order dated 2-2-2007.

Printing Publication and distribution of Ext.1- Responsibility for—

16. P.W. 29, the proprietor of Kamal Printers, admitted to have printed Ext. P1. He deposed that on 24-4-2006, he was engaged to do the printing and a compact disc (CD) containing the material to be printed, was given to him by R.W. 2—Sri Jinson, an AIYF worker and the printing was completed and printed material delivered on the evening of 24-4-2006. He stated that R.W. 3— Sri P. G. Manu, a DYFI worker took delivery of the printed material and made the payment. According to him, the printing of Ext. P1 pamphlets was carried out after obtaining necessary declarations in writing from the Convener, LDF Election Committee, Piravom Constituency and that Sri O. N. Vijayan, R.W. 1 was the convener, LDF Election Committee, Piravom Constituency. However, he asserted that R.W. 1- Sri O. N. Vijayan, the election agent of the respondent was not involved in printing Ext. P1. This led to certain questions being put by the Court to P. W. 29. He then stated that the entry in the 6th page of Ext. P1 shows his press as the printer and that such entry was made while preparing the CD and that it was done with his consent, obtained by R. W. 2 - Sri Jinson. He further stated that he



consented to print the material without seeing it and still further that, he had not obtained declaration from the Convener, LDF Election Committee. There was no further material, by the noticees contradicting P. W. 29.

17. Sri Jinson, as R.W. 2, stated that the draft of Ext. P1 was prepared by the active workers of LDYF and that the printer (P. W. 29) wanted the material to be brought in the form of a CD and therefore, the material was composed through an active worker in Mulamthuruthy and a declaration was given by him (R. W. 2) to P. W. 29 for the purpose of printing Ext. P1. He also deposed that it was he who delivered the declaration to P. W. 29. He further deposed that the printed materials (Ext. P1) were collected from P. W. 29 and taken to the Office of a Co-operative College in Piravom which was being used by LDYF activists and information was passed on to the active workers in different Panchayat areas to collect Ext. P1 for distribution. He further stated that since the polling day was nearing, only a portion of Ext. P1 notices was taken by the active workers and that the remaining were left there. He stated that Ext. P1 was obtained from the press only in the evening of 25-4-2006 and it was distributed only from 26-4-2006. He also conceded that Ext. P1 contains a request to cast the votes for the respondent, the LDF candidate. He stated that "LDYF workers distributed Ext. P1 as part of the election campaign of the LDF candidate, the respondent". He further stated as follows:

"I do not definitely know the Panchayats where Ext. P1 was distributed. Ext. P1 was printed and published for circulation among the voters. P. G. Manu, P. K. Suresh, Swamidasan, Siby Padikkaparambil, Vimal Chandran are active workers of LDYF and Ext. P1 was distributed by them and through others under their control. They belong to Ramamangalam, Piravom and Edakkattuvayal Panchayats. The distribution of Ext. P1 was not confined to Piravom Town. Such distribution of Ext. P1 was in connection with the election campaign for respondent, the LDF candidate and was not for any other candidates. It was on 22-4-2006 that it was decided by the LDYF Mandalam Committee to print Ext. P1. The decision regarding distribution in different parts of the constituency was also taken on that day."

18. Sri Jinson (R. W. 2), in his explanation to the show cause notice issued under the proviso to Section 99 (1), has taken the stand that the pamphlet was published by LDYF Piravom Mandalam Committee of which he is a member. It is pleaded by him that Ext. P1 was not published by LDF Election Committee but it was published by Convener, LDYF Piravom Mandalam Committee.
19. As X. W. 7, Sri Jinson gave evidence stating that he was involved in the preparation of Ext. P1 and it was published by LDYF Piravom Mandalam Committee. He stated that he was the Chairman of LDYF Election Committee, though later he stated that there was no Election Committee for LDYF, but there was only a Mandalam Committee and it was that Committee which decided to publish Ext. P1.
20. R. W. 3-Sri Manu deposed that he is an active worker of DYFI and that LDYF is an organisation consisting of active workers of DYFI, AIYF, NCP, etc., with leftist ideologies. He deposed that "Ext. P1 was prepared by the important workers of LDYF including me". His version corroborates R. W. 2 - Sri Jinson regarding the preparation of the CD and that Ext. P1 pamphlets were printed and obtained from P.W.29 in the evening of 25-4-2006. According to him, he and R. W.2- Sri Jinson watched the CD in a computer unit and then gave it to P. W. 29, for printing.

Regarding distribution, he stated as follows:

"The entire printed materials (Ext. P1) were not distributed. LDYF workers would have distributed a portion of it. But I do not specifically know as to who distributed."

R.W. 3, Manu, further stated as follows:

"The bill for printing Ext. P1 and two copies of Ext. P1 were given to the Office Secretary of LDF Election Committee because the expenditure incurred had to be accounted for by the candidate."

21. In his reply to the notice under the proviso to Section 99 (1) of the Act, R.W. 3 Sri P. G. Manu also took the stand that Ext. P1 was published by the LDYF and" not the LDF Election Committee.
22. In his further deposition as X.W. 6, he stated that he was involved in the preparation of Ext. P1 and that it was prepared on the basis of the discussions between him and others. He attempted to characterize his statements as R. W. 3 as those rendered based on his personal opinion.

23. R. W. I-Sri O. N. Vijayan, the election agent of the respondent, stated as follows:

“As the convener it was part of my duties to identify the party workers who will work in the different areas within the Assembly in connection with the election campaign. It was also my duty to arrange for the public meetings and other propaganda modes for the campaign. It is part of my duties to ensure that the materials printed by the LDF for the election campaign are made available in different localities within the constituency. LDF workers in each panchayat were given the responsibility of distributing those pamphlets. The workers at the panchayat level will make available the pamphlets to workers at the booth level and the workers at the booth level distribute the pamphlets to the voters. It is the LDF Election Committee with me as the convener which decided as to what are the pamphlets to be printed and published in relation to the election campaign. It is the said pamphlets which are so printed that are made available by the LDF for distribution in the constituency.”

He further stated as follows:

“All pamphlets published by the LDF in connection with the campaign of the respondent have been printed showing my name as the publisher. Those pamphlets were distributed by the LDF workers.”

He also stated as follows:

“I had sent the copies of those pamphlets including the number of copies, expenses incurred etc., as per the return to be filed before the District Election Officer. The candidate has to sign in that return. The return regarding the publications of pamphlets etc. and the expenditure incurred is filed with the signature of the candidate and the candidate signs the same after ascertaining the correctness of the statement.”

24. When Ext. P2 certified copy of the return filed by the respondent in relation to his expenditure was put to R.W.1, he, who is the election agent of the respondent, stated as follows:

“Ext. P2 return shows that the expenditure for printing Ext. P1 was incurred by me on behalf of CPI-M. All statements in Ext. P2 return of declaration are true. The materials, publication of which is recorded in Ext. P2, were for the purpose of distribution during the election campaign.”

25. Sri O. N. Vijayan, in his reply to the show cause notice issued under the proviso to section 99 (1), took the stand that Ext. P1 was not published by the LDF Election Committee, but was published at the behest of the LDYF Piravom Mandalam Committee and the inclusion of the expenditure for Ext. P1 also, in the return filed by the respondent candidate is only an inadvertent omission in preparing Ext. P5 return.
26. In his further evidence as X.W. 8, his explanation for the script at the foot of Ext. P1 that it is published by the LDF Election Committee is the same as that extended by Jinson and Manu, to wit, that the letter 'Y' was erroneously omitted while printing and it was therefore that the publisher was shown as the LDF Election Committee instead of LDYF Election Committee. He, however, vouchsafed the inclusion of the expenditure for Ext. P1 as part of the expenditure incurred for the candidate, in Ext. P5 return. He also conceded that the bill issued by Kamal Printers for printing Ext. P1 was produced along with the return and that his name is shown as the payee in Ext. P5 regarding the expenditure for printing Ext. P1.
27. The respondent as R.W. 4 stated that Ext. P5 is a certified copy of the books of accounts maintained by him in the statutory form in relation to the election and that he has certified at the foot of each page of that document that it is true account kept by him/his election agent under Section 77 of the Act. He also deposed to have certified to the veracity of the entries in Ext. P5, bona fide believing the correctness of the accounts maintained by the Office Secretary of the Election Committee. He stated as follows:

"I am responsible for the said accounts. Sri O. N. Vijayan, R.W.1, is my election agent. He is equally responsible like me for matters relating to the election. He was authorised to expend the funds in connection with the expenditures."

He further stated as follows:

"Different organisations including SFI with leftist ideology have worked for me in the elections. The expenditures incurred by them have also been shown in my election expenses. Similarly expenditure incurred by LDYF have also been shown in the accounts. LDYF was actively involved in my election campaign. LDYF had conducted a kaalajhadha as part of my election campaign. Ext. P5 reflects the

expenditure for the food provided for the participants of the sid kalajhadha. The expenditure incurred by such different organisations who have campaigned for me and had printed leaflets, pamphlets etc. are also included in my election expenditure on the basis of the bills and proceeds provided by such organisation. The entries in Ext.P5 with the date 25-4-2006 include printing charges of different notices paid by the election agent shown to be incurred by the political party, CPI-M and spent towards different organisations namely, SFI, Mahila etc. It has been so shown since the expenditure was for the purpose of my election campaign. Ext.P1 is the brochure in relation to which an expenditure of Rs.10,000 is shown as on 25-4-2006.”

He further stated as follows:

“Ext. P1 contains the exhortion to lead me to victory in the election from Piravom L. A. Constituency. My election symbol is also conspicuously shown in Ext. P1. Different photographs showing me are also printed in Ext. P1. The final return given by me regarding election expenses was submitted after verifying the supporting bills and vouchers regarding various expenditures. It included the voucher for printing Ext.P1 pamphlet. That final return was filed along with my affidavit dated 7-6-2006. I had seen all the vouchers including the voucher regarding the printing for LDYF.”

28. Regarding publication of Ext. P1, he further stated as follows:

“The publication of Ext. P1 would have been for being distributed among the electors. Ext. P1 would have been published to convey ideas to the electors though I do not know the real intention of its publisher, LDYF. Any publication would be for the purpose of communication and therefore Ext. P1 would have been distributed. Ext. P1 contains different matters including replies to the contents of a notice published by the UDF election committee. I believe that the contents of Ext. P1 are replies to the UDF election committee.”

29. Regarding expenditure, the respondent, as R.W.4, stated as follows:

“The statement in Ext.P2 affidavit that the abstract statement of election expenses annexed as Annexure II to the said account also includes all expenditures incurred or authorised by me, my election agent, the political party which sponsored me, other associations/body of persons and other individuals supporting me, in connection with the election is true. The statement in Ext. P2 that the account of my

election expenditure as annexed thereto includes all items of election expenditure incurred or authorised by me or by my election agent, the political party which sponsored me, other associations/body of persons and other individuals supporting me, in connection with the election is also true. The expenditure for printing Ext. P1 is also included in the accounts which are so verified by me as per Ext. P2 affidavit.”

30. In the backdrop of the above evidence from the side of the respondent, his witnesses and P.W.29, the printer, as also the depositions of the notices as X.W.6, X.W.7 and X.W.8, the fact that Ext. P1 was drafted, printed and published with the consent of the election agent of the respondent is well established. By filing Ext. P5 return Under Section 77 of the Act, showing the expenditure for printing Ext. P1 as having been incurred by the election agent, the respondent has taken upon himself the responsibility of such publication. This is all the more so because, the election agent is the alter ego of the candidate and the candidate is bound by all the actions of the election agent. The attempted explanation of the notices and the respondent that Ext.P1 was published by LDYF election committee and not LDF election committee, cannot be accepted at all. Firstly, it is the admitted situation that there was no committee called the LDYF election committee. The explanation offered was that the LDYF Piravom Mandalam Committee acted as the LDYF election committee. The law relating to election requires the name of the publisher of notice and other materials to be specifically and correctly stated. Having shown the expenditure incurred for Ext.P1 in the return filed by the respondent candidate and having shown his election agent X.W.8 (R.W.1) as the payee for such expenditure in the return, the respondent cannot be heard to contend that the notice was not published by his election agent or even himself and with their consent.
31. One of the questions for specific decision is as to who is the publisher of Ext. P1. Was it the respondent? or his agent R.W.1? The allegation in the election petition is that Ext. P1 has been published by Sri O. N. Vijayan (R.W.1), the election agent of the respondent while R.W.2 Sri Jinson V. Paul and R.W.3 Sri P. G. Manu have deposed owning up the drafting and the publication of Ext. P1, as printed by P.W.29. However, they take “the stand that it was the LDYF, Piravom Mandalam Committee which published Ext. P1 and not the convener, LDF Election Committee, Piravom LA Constituency as shown at the foot of the last page of Ext. P1. It is their explanation that the letters “LDF”

among the last sentence in the last page of Ext.PI are errors and that it should read “LDYF”. I shall immediately dispose of that argument. The last sentence in the last page of Ext. pl shows that the publisher is convener, LDF Election Committee, Piravom LA Constituency. Assuming that I were to insert the letter “Y” between the letters “D” and “F” and read it as published by the Convener, LDYF Election Committee, Piravom LA constituency, that would contradict the stand of R.Ws. 2 and 3 that LDYF did not have any Election Committee and that LDYF, Piravom Mandalam Committee shown in the line above the last line of the last page of Ext. PI is not a committee constituted in connection with the Election. So much so, the attempt of R. Ws. 2 and 3 and also R. W.I to pass off Ext.PI as one published by any person other than the Convener LDF Election Committee, Piravom LA constituency has to necessarily fail. Now, who is the convener, LDF Election Committee, Piravom LA constituency? Admittedly, it is R.W.I Sri O. N. Vijayan, who is the Election agent of the respondent. Therefore, on the face of Ext. PI, it is shown that it was the election agent of the respondent, who published Ext. PI. The Election agent is nothing but the alter ego of the candidate. It was, obviously, therefore that the election petition was filed attributing the publication of Ext. PI to the election agent of the respondent.

32. Now, I shall consider certain other materials on recorded.
33. Ext. P2 is the affidavit sworn to by the respondent on 7-6-2006 and filed before the District Election Officer. It is stated in that affidavit that he/his election agent kept a separate and correct account of all expenditure incurred/authorised by him/his election agent, in connection with the above election between the date of his nomination and the date of declaration of the result, both days inclusive. He had annexed the account maintained in the register furnished by the Returning Officer, for such purpose . The supporting vouchers, bills etc. were also presented along with Ext. P2. The relevant portion of the statement of accounts marked as Ext. P2 (i ) , read along with the connecting oral evidence would show that the expenditure of Rs. 10,000 shown to have been incurred for printing the LDYF notice was shown to have been spent by CPI (M) and paid by the election agent of the respondent, namely, R.W. 1. and that the said payment was made by R.W. 1. There is no controversy that this expenditure shown in the accounts is the expenditure for printing Ext. PI. Ext. P2 also contains the copy of the receipt issued by P.W.29, printer, to LDYF Piravom N. Mandalam Committee. The entire accounts along

with the Abstract Statement of Election Expenses are also on record as Ext. P5. It also contains the affidavit dated 7-6-2006 referred to above, as also the Abstract Statement of Election Expenses. Among other things, it shows that the respondent's election agent was R. W.1 and that the respondent was a candidate set up by a recognised political party, namely, CPI(M) which is recognised as a national party and the said party has incurred/authorised expenses in the election of the respondent. The entry in clause VI in Part II of the Abstract Statement of Election Expenses (Appendix 2 at page 31 in Ext.P5) would show that according to the said statement of the respondent, no other association/body of persons/individual had incurred/authorised expenses in the election of the respondent. It is therefore that in clause VII, the respondent did not give any details of any such association or body of persons or individuals. An amount of Rs.1,11,430 is shown as the expenditure towards campaign materials like handbills, posters etc., going by the Abstract Statement of Expenditure on Election by the candidate/his Election Agent in Part III of Ext. P5. The said expenditure is shown as incurred/authorised by the political party which had set up' the respondent for the election Ext.P2 (i) entry regarding the expenditure towards printing of Ext.p1 is also part of Ext. P5. Apart from that entry, the said accounts statement takes in various other expenditures. It can be seen that all the expenditures are incorporated by showing as having been incurred/authorised by the candidate (respondent)/his election agent (R.W.1), CPI (M), a political party and the name and address of the payee of all those expenditures is either the respondent or R.W.1, the election agent.

34. On the basis of the aforesaid materials even if it is assumed that it were R.w.2 and R.w.3 who were instrumental in having Ext.P1 printed, as spoken to by them, the responsibility and legal liability of having printed and published Ext. P1 falls back on R.W.!, the election agent and R.W.4, the respondent. More so, when the expenditure for printing Ext. P1 has been shown to have been incurred by making payment through R.W.1, the election agent of the respondent who, as already noted, is none other than the alter ego of the respondent. So much so, I have no hesitation to conclude that the respondent and his election agent, R.W.1 are responsible for the publication of Ext.P1.
35. It is the plea of the petitioner that the publication was made by R.W.1. As already noticed, that plea was on the basis of the inscriptions at the foot of Ext. P1. I have found that R.W.1 is responsible for the publication of Ext. P1. Even without a plea, the materials on record abundantly



proved that even the respondent took up the responsibility of the publication of Ext. P1 by including its expenditure as expenditure incurred for the purpose of his election and payment having been made by his election agent, R.W. 1.

36. The question that immediately arises for decision is as to what, in the eye of law, is the role of R.W. 2 and R.W. 3 who have taken up the responsibility of having been instrumental in drafting and publishing Ext. P1 ? Going by their own admissions, they cannot wriggle out of the fact that they were also participants in the process of the drafting, printing and publication of Ext. P1. So much so, along with the respondent and his election agent, R.W.1, R.Ws. 2 and 3 are also responsible for the publication of Ext. P1.
37. The other evidence regarding the publication and distribution of Ext. P1 can also be considered.
38. The petitioner, P.W. 1, is an office bearer of the political party of P. W. 30. He is a resident of Kakkoor in Thirumarady Village. He spoke regarding the propaganda meetings of the respondent and the distribution of Ext.P1. P.W. 2 was earlier the President of the Pampakuda Grama Panchayat and was involved in election work. He named Sri John Thuruthikattil, Sri Suneesh Asokan of Laksham Veedu and Sri John Kuriakose Kaduvakulangara as those who distributed Ext. P1. He stated that he saw the distribution on 23-4-2006 and that he was given a copy of Ext. P1 on that day. P.W. 3 is a college lecturer, who stated that he received Ext.P1 on 23-4-2006. One Sri Sony, Sri Radhakrishnan and Sri Benny, LDF workers belonging to CPM, had given me the notice. He is a member of the State Committee of the political party of Sri T. M. Jacob. P. W. 4 is a rubber tapper, who deposed to have received Ext. P1 on 22-4-2006. He is the President of the Piravom Constituency Committee of the political party of P.W.30. P.W.5, a resident of Oliyappuram stated that he obtained Ext. P1 notice on 24-4-2006 from Sri Narayanan, a former member of the Thirumarady Panchayat and that the said person was accompanied by Sri Babu Thacharukuzhiyil and Sri Raju Vattappillil. P.W.6, a resident of Valiyapadam, a retired Head Warder from the Jail Department deposed that he got Ext. P1 on 24-4-2006. P.W.7 deposed to have received Ext. P1 on 24-4-2006 in Kakkoor junction. He further deposed that Sri Krishnan Raman Chittezhath and Sri Sijumon Markose, Nallarikunnel were found distributing Ext. P1 and that they are active LDF and CPI (M)

workers. He also stated that he has no political activity and had not worked for any person in connection with the elections. P.W.8 is a resident of Peppathy of Edakkattuvayal Panchayat. He deposed of having received Ext. P1 on 26-4-2006 from Sri Eldhose, Sri George Kurivila and Sri C. O. Sudhakaran, who are CPI (M) workers. He is an agriculturist and deposed that he has no particular political affiliations. P.W.9 is a resident of Mannathoor in Thirumarady Panchayat. He stated that he obtained Ext. P1 on 24-4-2006 while being distributed by Sri John Kuriakose, Sri Alias Varkey and Sri P. M. Krishnan, who are workers of CPI (M). He stated that he knows P.W.30 whose wife Smt. Daisy is a distant cousin of the said witness. He stated that he was not engaged in canvassing votes for P.W.30 and that he is an agriculturist. P.W. 10 stated that he is a resident of Kanjiramattom in Amballoor Panchayat and that on 24-4-2006 at 9 a. m. he was given Ext. P1 notice by Sri K. A. Narayanan, Kumbathil, Sri E. M. Balan and Sri E. N. Gopalan who are CPI (M) workers. He was the President of Amballoor Grama Panchayat Committee of Kerala Congress Jacob Group, though he does not hold any such post, as of now and was not involving in the electioneering of P.W.30. P.W.11 is a resident of Kanjiramattom in Amballoor Panchayat. He deposed of having received Ext. P1 at about 9.45 a.m. on 24-4-2006 in Thondilangady junction and that it was given to him by Sri. K. F. Kuriakose, an LDF worker accompanied by one Sri Baby and Sri Shammu alias Shanmughan, who are also CPI (M) workers. He was the President of Amballoor Mandalam Committee of the political party of P.W. 30. P.W. 12 is an autorickshaw driver. He also works as a rubber tapper. He deposed to have received Ext. P1. He denied the suggestion that he is tendering false evidence at the instance of the Smt. Jessy Peter to whom he had mentioned about the receipt of Ext. P1. P.W.13 is a former President of Ramamangalam Grama Panchayat. He deposed to have received Ext. P1 at about 3 p.m. on 24-4-2006 at Sivilly Junction in Ooramana and that it was handed over to him by SriYacob and Sri Sumith, who are CPI (M) workers. He was campaigning for P.W.30. P.W.14 is the present President of Thiruvamkulam Mandalam Committee of Kerala Congress Jacob Group. At the time of election, he was a worker of DIC (K). He stated that Sri Ravi and Sri Yacob delivered Ext. P1 to him on 23-4-2006 and that they are CPI (M) workers. P. W. 15 was actively involved in campaigning for the election of P.W.30. She stated that she was an office bearer of DIC (K) at the time of the election and she got Ext. P1 notice at about 7 p. m. on 25-4-2006 at Peppathy. She belongs to that ward. She was given

that notice by Sri Eldhomon and Sri Sudhakaran, who came during the election campaign programme of the respondent. Sri Yeldhomon was the polling agent of the respondent. P.W.16 is a Christian Priest, who was earlier the Vicar of the Church to which P.W.30 belongs. He stated that he had obtained Ext.P1 pamphlet at 5 p.m. on 23-4-2006, being distributed by certain persons who were wearing the badge containing the symbol “hammer, sickle and star”, though he does not know the names of the persons who distributed the notice. He said that he got the notice at Karingachira. P.W. 17 is a Congress (I) worker. He deposed that he obtained Ext. P1 notice on 23-4-2006 while he was in his shop. The pamphlet was delivered to him by Sri P. K. Mathew, Sri Sojan George and the Local Secretary of CPI (M). P.W.18 is a student of M. A. Degree course in the school of International Relations and Politics in the M. G. University Centre. He deposed that Ext. P1 was given to him by Sri Jose, Sri Rajan and Sri Sasi on 23-4-2006 at Piravom. P.W. 19 is the Piravom Mandalam President of the political party of P. W. 30. He deposed that Sri Rajan, Sri Sasi and Sri Jose gave Ext. P1 pamphlet to him. P.W.20, belonging to the political party of P.W. 30 and a Member of the Piravom Panchayat and who had actively campaigned for P.W. 30, stated that he obtained Ext.P1 pamphlet and that he personally knows the persons named by him as those who delivered Ext. P1 to him. P.W.21 is an elector from Ward No.12. He deposed that he was given copy of Ext. P1 pamphlet on 23-4-2006 at Pallippady junction by LDF workers, including Sri Ajesh Manoharan and Sri Sajeew Kumarasseril. P.W.22 retired from the Boarder Security Force and is a resident of Maneed and presently working with the BSNL on contract basis. He stated that while returning from Piravom with one Sri Aji Peter, Ext. P1 pamphlet was given to him at Nechur church bus stop at about 2-2.30 p.m. On 26-4-2006 by Sri Dinesan, Sri Nanukkuttan and Sri Rajappan of whom Sri Dinesan is the Local Secretary of CPI (M). P.W. 23 is the Vice President of Chottanikkara Grama Panchayat and an office bearer of the political party of P.W.30. He deposed that while standing in front of the lodge belonging to him, Sri Lalan, Sri Haridas and Sri Sadanandan, who belong to CPI (M), delivered Ext. P1 pamphlet to him. P.W.24 is the Ernakulam District Secretary of the political party of P.W.30 and was actively involved in the election work for P. W. 30. He deposed of having got Ext. P1 as distributed by Sri P. J. Jose, Sri Sadha and Sri Raju, LDF workers. P. W. 25 deposed of having received Ext. P1 while it was being distributed by LDF workers, including Sri Mathew Pramadam, a CPI

worker, Sri John of CPI (M) and Sri Sojan George of Janatha Dal. P. W. 27, an office bearer of Sri T. M. Jacob's political party and an Ayurvedic Physician, deposed that Ext. P1 was given to him on 26-4-2006 by Sri C. K. Reji, Sri Rajan and other LDF workers who were distributing Ext. P1 at Mulamthuruthy while campaigning for the respondent. P.W.28 deposed that he is a sympathizer of P.W. 30's political party and that he was given Ext. P1 pamphlet on 26-4-2006 by Sri C. K. Reji and Sri T. K. Rajan, who are CPI (M) workers. P.W.31, an office bearer of the political party of P.W.30, deposed of having obtained Ext. P1 on 24-4-2006 having been received the same from Sri Vasu and Sri Mohan, who are LDF workers belonging to Ramamangalam Town. The aforesaid depositions of the witnesses examined on behalf of the election petitioner would provide formidable support to the other materials on record in the form of the depositions of R. W. 1, R.W. 2, R. W. 3, R. W. 4 and P. W.29 referred to by me earlier, on the basis of which it can be concluded beyond any reasonable doubt that Ext. P1 pamphlet was printed, published and distributed. There is no contra evidence brought out at any point of time, including at the stage after the noticees have come on record with their objections.

39. I may also immediately notice that there is an apparent variance between the stand taken by R. Ws. 1 to 4 and P. W. 29 on the one hand, and the other witnesses referred to above, on the other, regarding the dates of distribution of the pamphlet. There was an earnest attempt on the side of P.W.29 and R.Ws.2 and 3 to push off the actual date of printing and distribution to be after the dates of distribution, spoken to by the witnesses examined on behalf of the election petitioner. It is also true that the return filed by the respondent, before the institution of this election petition shows that the expenditure for publication of Ext. P1 was incurred only on 25-4-2006. But that is of no consequence because, the evidence of R.Ws. 1 to 4 and that of P. W. 29, read as a whole, establishes beyond any reasonable doubt that Ext. P1 was, as a matter of fact, drafted, printed, published and distributed among the voters in the constituency in relation to the election campaign of the respondent.
40. In view of the above, it is only to be held that Ext. P1 was drafted, printed and published and distributed by or with the consent of the respondent and his election agent and the respondent, in making Ext. P5 return as noticed above has owned the legal responsibility for such

publication. I do so. It is further held that R. W. 2 and R. W. 3 were instrumental in drafting, printing and publishing Ext.P1 and the responsibility of such publication falls on R. W. 1 and the respondent along with R. W. 2 and R.W. 3.

**Does Ext. P1 contain any incriminating statement falling within section 123(4) of the Act as alleged, calling for the election to be declared void under Section 100 (1) (b) of the Act?**

41. The next issue that arises for decision is as to whether Ext. P1 notice contains statements of facts which are false, in relation to the personal character or conduct of P. W. 30 Sri T. M. Jacob and whether such statements have been made by the wrong doer either believing such statements to be false or without believing such statements to be true and still further, whether such statements are reasonably calculated to prejudice the prospects of P. W. 30 in the election. The plea of the election petitioner primarily relates to Questions 2 and 6 posed in page 3 of Ext. P1 and the tail-piece of Ext. P1 in the backdrop of the said two questions.
42. Since Ext. P1 (produced as Annexure A, along with the election petition) is in Malayalam and an English version was filed along with the election petition, it was deemed appropriate to obtain an official English translation of that pamphlet. Accordingly, an English translation of Ext. P1 was prepared by the Head Translator of High Court. Copies of the same were issued to the parties along with the order dated 24-11-2006. Neither of them has raised any objection to that English translation of Ext. P1. At the time of hearing, prior to the order dated 2nd February, 2007, the learned counsel for the respondent pointed out that instead of the word “identify” in the last page in the sentence “Identify the Shameless Hypocrite of Development Trickery”, it would be appropriate that the word “recognise” is used. The said suggestion is accepted. The English translation of Ext. P1 with such modification is hereinafter referred to as “Ext. P1”.
43. Having regard to the nature of the contentions revolving the contents of Ext.P1 and the stand taken by some of the defence witnesses particularly, R.W. 2 and R.W. 3, I deem it appropriate to extract the entire English version of Ext. P1 with the substitution of the word “identify” with the word “recognise”. It reads as follows :

## ANNEXURE A-1

## ENGLISH TRANSLATION OF ANNEXURE A

Page 1

(Photograph of M. J. Jacob)

PEOPLE'S JACOB

M. J. JACOB

Page 2

Our dear M. J. Jacob - of people sided development ordinary person - for completing in the soil of Piravom the development began in a village road.

The leader of democratic development, who introduced the small village Thirumaradi to Indians.

The unbelievable victory song of Thirumaradi model in memories...

It is requested to elect the noble, people's leader of unblemished development activities, your trusted M. J. Jacob as your representative.

M. J. JACOB

(Emblem)

Page 3

### CHARIOT RIDE OF DEVELOPMENT TRICKERY WITH THE RIDDLES OF A QUARTER CENTURY

1. Though 15 years have passed since five Congress Panchayath Presidents were made to conduct satyagraha, has the Piravom Taluk become a reality ?

First step of deception on congressmen. Beginning of challenge to the people of Piravom.

2. A member of your personal staff who had attempted 'to murder Thirumaradi Congress Mandalam President P. J. Baby, Joseph Babu and K. P. Jacob at Onakoor is still continuing as an absconder. Can you give an answer to the ordinary congressmen in this regard ?
3. Employment to 15 lakhs people - UDF manifesto - what industry has been brought to Piravom Mandalam ? How many employment opportunities have been created ? Answer expected.
4. What have you got to say about the pitiable condition of five Government Hospitals which are the only resort of the poor people of Piravom Mandalam ?
5. Is it enough to speak about National Highway only through newspapers ? Where is the Highway, MLA?

6. Do you still stick to the Rs. 1300 crore corruption charges levelled by you against Oommen Chandi ?

Page 4

## A BRIEF HISTORY OF PIRAVOM MANDALAM

T. M. JACOB

Piravom MLA for 19 years. Minister for 8½ years after winning from Piravom. If the notice issued by you with the caption “Chariot Ride of Development” is true, it would be like putting the cart before the horse. Is it political morality to arrogate to yourself the achievements of developments during the period of Sri Gopi Kottamurikka1, Sri P. C. Chacko and Benny Behanan ?

### Thiruvankulam

How does the Railway Overbridge constructed by the Central Government become your development? Should the Chitrapuzha Bridge Completed by Sri Gopi Kottamurikkal be written in your account ?

What is the business of the MLA in Nedungapuzha Bridge Constructed by the Roads & Bridges Corporation ?

Drinking Water Scheme which is a part of Tripunithura - need it be put in your account ? Why is it that the road parallel to Tiruvankulam road which is hassled by motor accidents is not constructed so far ? Can you give a reply ?

### Chottanikkara

How can Chottanikkara Bypass for which Rs. 37 lakh was got sanctioned by Sri Gopi Kottamurikkal and the work of which has commenced be that of the MLA ? Which is the scheme in your account except the drinking water scheme commissioned by Minister Baby John during the LDF rule? Is it proper to put the existing veterinary hospital in the new account ?

Why is that the Periyar Valley Canal was not completed in Tiruvankulam in spite of holding the Portfolio? In spite of being a Minister for drinking water for 8½ years, could the shortage of drinking water be solved ? The famous Chottanikkara temple is an important pilgrim centre in the Mandalam. Is there any development to Chottanikkara consistent with that ?

### Mulamthuruthi

Is it correct to be the new claimant to the Kolenchery Kadavu Bridge begun by Gopi Kottamurikkal, V. Viswatha Menon? was drinking water made available in a manner beneficial to the public ? ICDF Office was set up during

the period of Sri Gopi Kottamurikkal. How can you claim the money given to the Technical School by the three tier Panchayaths? What is the development in Mulamthuruthi Hospital except the Rs.1.25crores given by the Block Panchayath. Claim worth Rs. 55 lakh is made on the Perumpilly Nada - Mattathanam Road. But the amount was given by the Block Panchayth. How was the Office of ANERT lost ?

Page 5

## STEPS OF DEVELOPMENT

(Photograph of M. J. JACOB)

*Photograph*

The society started by M.J in 1974 was converted into Manimalakunnu College by the LDF Government in 1980.

### **Amballoor**

The Rs. 8 crore worth Thottara Pancha Scheme put an end to farming itself. Cheating the Agriculturists the contractors made huge profit. Need you take away the credit of Padivattom Bridge from Sri P. C. Chacko? Could you complete the drinking water scheme begun by Gopi Kottamurikkal? The people of Amballoor are struggling for drinking water. Housewives are roaming with pots in the place where there was Drinking Water Minister.

### **Edakkattuvayal**

Even now water is brought by the Panchayath in Lorries to different parts of the Panchayth. What happened to P. V. I. P. which should have reached Tonnalloor ? The claim regarding Minor Irrigation is rank hollow.

Friend, is it not shameful to speak about the controversial Olippuram-Moolemyal Road ? Have you forgotten that money was collected by the people? It is a Panchayath without a Plus Two School.

### **Maneed**

Do not misrepresent.

Neerkuzhi Lift Irrigation Scheme has not yet commenced. Is the Office of Periyar Valley that existed, functioning today? There is no Nechur distributory. In this Panchayath with a lot of Harijan Settlement Colonies, were any scheme for these groups of people implemented in Maneed where they are in largest number ? Nothing. Who closed down the KSEB Billing Section Office ?



### **Piravom**

KSRTC depot in own name. The land of 3.5 acres belongs to the Panchayath. Is the Sultan Bathery -Piravom-Thiruvananthapuram bus still in existence ?

Page 6

*Photograph*

M.J. Jacob receives Swaraj Trophy of the State Government for the best Panchayath from M. Vijayakumar, the then Speaker of the Legislative Assembly. T. M. Jacob and V. J. Paulose MLA are also seen.

The situation is that treatment is not available in Piravom Government Hospital. Do you know that drinking water is not still there in Itiyarmala-Pongummala ? Stone was laid for the second time for Kalambur Bridge. Why is work not done ?

### **Ramamangalam**

Is not the Peruvammuzhi Bridge completed by P. J. Joseph an achievement of the LDF rule? Why is it that Mammalasseri-Ooramana section of M.V. I. P. is not completed? Why is it that the drinking water problem in the Unnekkadu, Parayampathi area is not solved? Are you aware that the Mammalassery River side road is lying unfit for traffic for the last 14 years?

### **Pampakuda**

Both M.T.M. High School and Government High School got plus two through the court. Are you putting the same in your account? Not a paisa has been given as help for the Government High School for the last 29 years. People remember the Onakkur Bridge completed during the LDF Government. Have you forgotten the 15 rural roads for which stones were laid in 1996, which are yet to be completed ? No drinking water is available in Ayyanthanam, Mangattukuzhumbu, Chennattupadi area.

### **Thirumaradi**

People can identify those who declared when Thirumaradi Panchayath got the Best Panchayath award, that it does not deserve it. The breaking of the plaque in the Manimalakunnu Government College, also will not be forgotten.

RECOGNISE THE SHAMELESS HYPOCRITE OF

DEVELOPMENT TRICKERY...

REACT AGAINST THE DECEIVER OF THE PEOPLE...

L. D .Y. F., PIRAVOM MANDALAM COMMITTEE

*(Translated by: C. M. Mathai, Head Translator, High Court of Kerala.)*

44. R.W.3 - Sri P. G. Manu, an active worker of DYFI stated that he was the convener of the LDYF for Piravom LA Constituency and that LDYF is an organisation consisting of active workers of DYFI, AIYF, NCP and other youth organisations with leftist ideologies. He stated that Ext. P1 was prepared by the important workers of LDYF, including him. He said that Ext. P1 was issued by way of reply to the claims of P.W.30 Sri T. M. Jacob in Ext.R1 pamphlet. At one stage during his cross

examination, he took the stand that Ext. P1 is not one published in connection with the election but was published “at the time of election” and that it contains statements regarding the youth and matters affecting students and youth. He admitted that Ext. P1 contains a photograph of the respondent and his election symbol. He also deposed that Ext. P1 contains matters connected with the election and that it contains a call to vote for the respondent and that the request in Ext.P1 is to the voters of Piravom LA Constituency. *He stated that Questions 2, 5 and 6 in the third page of Ext.P1 are addressed to Sri T. M. Jacob and that all the Questions in Ext. P1 are posed to be answered by P. W. 30 Sri T. M. Jacob and they are Questions to that individual. He further stated that Question No.2 in the third page of Ext.P1 is so posed because, while Sri T. M. Jacob was a minister, a member of his personal staff was an accused in a criminal case and he was not arrested, but was absconding.* He also stated that “if a member of the personal staff is an accused, the local people will take him as bad to have protected the said person from being arrested or to go as an absconder”. *He further stated that “the said question was so crafted to give the message to the people that Sri T. M. Jacob is involved in harbouring the accused persons in that criminal case who are evading arrest and are absconders”.* R. W. 3, who is an advocate by profession, stated that the word “absconder” is not specifically stated anywhere in the police papers in relation to the said criminal case and that he had not enquired about bail being granted to the second accused Sri Scaria, who was in the personal staff of P. W. 30, while he was a minister. *He further stated that if the contents of the second question in the third page of Ext. P1 relating to Onakkoor incident are false, such statements will communicate a false information to the public and that what is stated in that question is not a silly matter and if that has been done by a person, while a minister the public has to know it and that is why it was so stated in Ext. P1.*

45. Of immediate relevance is the testimony of the respondent as R.W.4. He stated that Ext. P1 contains the exhortation to lead him to victory in the election in the Piravom LA Constituency; that the publication of Ext. P1 would have been for distribution among the electors and any publication would be for the purpose of communication and therefore, Ext. P1 would have been distributed. He corroborates the version of R.W.3 that all the six questions in the third page of Ext. P1 are addressed to P.W.30 Sri T. M. Jacob. He stated that “the said questions are of a personal nature and of a political colour”. He went on to state that:

“to harbour an absconder in relation to a crime is neither good conduct nor part of the political life. If done, it is essentially a matter affecting the personal conduct of that person”.

He stated that:

“if the allegation of harbouring an accused is levelled against a Minister or any person in connection with an accused, who was already enlarged on bail, such allegation would be a serious one. The local people including me had great amount of resentment to the onakkur incident and to the fact that certain persons were not arrested. We had further resentment since a member of the personal staff of Sri T. M. Jacob while a Minister was involved in that incident”.

He also stated that:

“my personal opinion is that any wrong public statement as to whether a person involved in a criminal case is an absconder is wrong particularly when the matter is pending before the court. My opinion is that wrong statements should not be included in pamphlets.”

Regarding the onakkur incident, forming the theme of Question No. 2 in the third page of Ext. P1, respondent - R.W.4 deposed as follows:

“P. J. Baby, Joseph Babu and K. P. Jacob are prominent men in Thirumarady Panchayat. Joseph Babu and K. P. Jacob belong to the Political Party of Sri T. M. Jacob. P. J. Baby is the Thirumarady Congress Mandalam President. There was a hue and cry in the locality regarding the onakkur incident in which there was an attempt to murder the said persons. There was also a local harthal as the accused persons were not arrested. The second accused was a member of the then personal staff of Sri T. M. Jacob, as a Minister. Hence, there were heated local discussions that the second accused Scaria was not being arrested only because he is a member of the personal staff of Sri T. M. Jacob. That would have been the reasons for the second among the questions in Page No. 3 of Ext. P1.”

46. R. W. 2—Sri Jinson V. Paul deposed that Ext. P1 contains a request to Cast votes for the respondent, the LDF candidate and that LDYF workers distributed Ext. P1 as part of the election campaign of the LDF candidate, the respondent. He stated that the six questions enumerated in the third page of Ext. P1 are not intended to any particular individual and that no specific reply was expected from any particular person to those questions. He said that:

“we did not expect any answer to those questions from anybody because they were not intended to be questions but were only parts of the particular style adopted by us in making Ext. P1. The person to whom the question “can you give an answer to the ordinary congress men in this regard” as part of the second among the six queries in the third page of Ext. P1 is addressed to Sri T. M. Jacob.”

Later, he stated as follows :

“The person to whom reference is made in Question No.2 is Sri T. M. Jacob. That question was addressed to an individual and it is not merely a style in drafting. Question No. 6 also relates to corruption charges levelled by Sri T. M. Jacob. The person referred to as MLA in Question No. 5 is Sri T. M. Jacob. Question Nos.1 to 6 in page 3 of Ext. P1 are against Sri T. M. Jacob and it reflects that answers were expected from him. Question No. 2 in page 3 of Ext. P1 refers to Scaria, a member of the then personal staff of Sri T. M. Jacob and the statement that he is an absconder was made because he was not arrested.”

He stated that :

“the intention of Question No. 2 in page 3 of Ext. P1 is that it was bad, if a member of the personal staff of Sri T. M. Jacob, while a minister, was involved in the onakkoor incident. The said question will create an impression in the voters that it was bad, if such an incident had taken place.”

and further that :

“if such an incident had happened, that is bad for the people of Piravom and that the said question did not relate to developmental activities.”

Regarding Question No. 6, he stated as follows:

“Question No. 6 relating to the allegation of corruption levelled by Sri T. M. Jacob against Sri Oommen Chandy is also not one touching developmental activities of Piravom. That was also a question personally addressed to Sri T. M. Jacob. I do not know whether the

allegation of corruption regarding rupees 1300 crores levelled by Sri T. M. Jacob against Sri Oommen Chandy is recorded-in the proceeding of the Assembly. Our information regarding that allegation was from Malayala Manorama and Mathrubhumi Newspapers and the Television and nothing more.”

He further stated :

“The contents of Ext. P1 were prepared without referring to any authentic documents, but based on paper reports and information gathered from others, including the congress workers about whom reference is made in the second question in the third page of Ext. P1. The truth of the matter can be ascertained only by reference to the documents. We, however, relied only on the newspaper reports and other information. The reference to development trickery in the last page of Ext. P1 was not also intended against any particular individual.”

47. The contents of Ext. P1 have to be considered in the light of the above defence evidence.
48. With the aforesaid evidence, Question No. 2 in the third page of Ext. P1 contains a statement of fact that a member of the personal staff of P. W. 30-Sri T. M. Jacob attempted to murder the Thirumarady Congress Mandalam President Sri P. J. Baby, Sri Joseph Babu and Sri K. P. Jacob at onakoor. It contains the further statement that the said member of the personal staff of Sri T. M. Jacob is still continuing as an absconder. The question to Sri T. M. Jacob is whether he can give an answer to the ordinary Congress-men in that regard. It is a matter of fact over which there is not much of a dispute and for which there is evidence in this case, that Sri T. M. Jacob contested the election with the symbol “television”, of the political party DIC (K) which was then a constituent of UDF, of which the congress-I was also a constituent. Sri P. J. Baby, Sri Joseph Babu and Sri K. P. Jacob are Congress-men. The suggestion in the second question in third page of Ext. P1 is that a member of the personal staff, who going by the evidence is Sri Scaria, is an accused in that case and that he was continuing as an absconder. The fact that he was a member of the personal staff and the allegation that he is continuing as an absconder coupled with the question being posed to

Sri T. M. Jacob as to what answer he can give to the ordinary Congress-men in that regard, is a clear communication to any ordinarily prudent man that it was with the aid of Sri T. M. Jacob that Sri Scaria was continuing as an absconder or that Sri T. M. Jacob had harboured the said accused person. It is also suggestive that the said accused person has turned out to be an absconder and not merely one wanted, but yet to be arrested. In the backdrop of the political combinations in the then conglomeration called the UDF, it is apparent that the attribute thus made to Sri T. M. Jacob was reasonably calculated to prejudice the prospects of Sri T. M. Jacob's election because, he is one, who by the then political combination, could have well aspired to get the votes of the members, workers and sympathizers of congress-I and DIC (K) and other components in the UDF. Holding out an accusation that a member of his personal staff is an accused in an attempt to murder some congress-men and that the said person is an absconder and posing the question to Sri. T. M. Jacob as to what answer he has for the ordinary Congress-men is a manifest suggestion that Sri. T. M. Jacob was instrumental in letting that accused person to continue as an absconder and that he had harboured him. The said statement was intended to prejudice the prospects of Sri T. M. Jacob securing the votes of the Congress-men. Even the defence witnesses and the respondent as R. W. 4 have candidly conceded to the position that the contents of the said question would amount to levelling a personal charge against Sri T. M. Jacob. I have, therefore, no hesitation to conclude that Question No. 2 in the third page of Ext. P1 is a statement of fact affecting the personal character and conduct of Sri T. M. Jacob and one reasonably calculated to prejudice the prospects of the said candidate in the election.

49. The question that now arises for decision is as to whether such statement was false and whether the maker of such statement believed it to be false or did not believe it to be true.
50. Going by the version of P. W. 29 and R. Ws. 2 and 3, Ext. P1 was printed by 25-4-2006.
51. Ext. P10 is a copy of the bail order issued by the High Court of Kerala on 2-1-2006 on Bail Application No. 7581/2005 to Sri George John and Sri Skaria in relation to Onakkoor incident. That document was produced

along with I. A. 16/2006 and proved through P.W.1, being recalled and examined following the order dated 18-12-2006. Noticing that Ext. P10 is not a certified copy, a duly certified copy of the said order was also produced by the election petitioner along with memo dated 21-12-2006. The said document is received and taken on record as Ext. P10(a). The said order is on an application filed under Section 438 Cr. P. C. for pre-arrest bail. This Court noticed that since the investigation of the case was already over and final report filed, accused persons could be given an opportunity to enable them to appear before the appropriate court with an order for pre-arrest bail by this Court. It was accordingly that Ext. P10(a) order was issued.

52. I shall advert to Ext. R11, certified copy of the charge-sheet proved through R. W. 1. The said charge-sheet No. 13/05 is dated 22-10-2005. Following investigation on the basis of FIR. No. 43/02 registered on 24-2-2002, the Judicial Magistrate of the First Class, Muvattupuzha took cognizance of the said case on 25-11-2005 as C. P. No. 50/2005. The second accused is Scaria. Witness No. 41, the then Circle Inspector of Piravom Police Station, who was conducting the investigation, deleted Accused Nos.1 and 2 during the course of investigation and filed a report to the Court. On further investigation, Accused Nos.1 and 2 were also found to be involved and they were brought back into the array and Witness No. 45, Deputy Superintendent of Police, Crime Branch CBCID who then conducted the investigation, had filed a report to the Court. Accused Nos. 1, 2 and 14 were not arrested. These are facts discernible from the 18th page of Ext. R11.
53. From the aforesaid materials, it can be seen that while Ext. P1 was drafted and published towards the end of April, 2006, it was a matter of record of the competent courts, as early as by the end of October, 2005, that the aforesaid Sri Scaria was never arrested and that he was even removed from the array of accused persons during the course of investigation, though he was later on brought back to the array. It was also a matter of record that this Court had granted an order of bail to Sri Scaria on the 2nd of January, 2006. Hence, there was absolutely no material on record, nor have the respondent or noticees placed any further material, to show that the said Sri Scaria was ever declared as an

absconder or could have been treated as an absconder while the overwhelming evidence is to the effect that an investigation in relation to a case in which he was arrayed as an accused in the FIR had proceeded and ended up in a charge-sheet being filed arraying him as an accused, while during the course of investigation he was removed from the array of parties and later brought back into the array and still further, that he was granted an order of pre-arrest bail by this court, at least, four months before the publication of Ext. P1 pamphlet. Therefore, it is abundantly clear and it has been proved beyond all reasonable doubt that the statement in the second question in the third page of Ext. P1 that the member (Sri Scaria) of the personal staff of Sri T. M. Jacob “is still continuing as an absconder” was false.

54. Now, the question is whether the publisher of such statement had either believed it to be false or did not believe it to be true.
55. Having already found that the respondent—R. W. 4, his election agent R. W. 1 and R. Ws . 2 and 3, even by their admissions, are responsible for the publication of Ext. P1, I shall now consider as to whether all or any of them had either believed the statements in Ext. P1 to be false or did not believe them to be true.
56. Firstly, I shall deal with the question whether R. W. 1, the election agent of the respondent had either believed the statements in Ext. P1 to be false or did not believe them to be true. In his proof affidavit, the stand he took was that Ext. P1 pamphlet was not issued by the LDF and that neither he nor the respondent is responsible for its publication. He attempted to justify the contents of Ext. P1 by stating that they are answers to the statements in Ext. R1 and that a combined reading of Exts. R1 and P1 would show that Ext. P1 has been issued in answer to the claims in Ext. R1. He further stated that Ext. P1 was issued with the knowledge or consent of neither the respondent nor him. In paragraph 8 of the proof affidavit, he relies on Exts. R10 and R11, FIR and the charge-sheet respectively to state that the statements in Ext. P1 regarding the criminal case (Onakkoor incident) are true and that the allegations of corruption referred to in Ext. P1 are very well known to the voters of the constituency, having been. prominently reported in all leading Newspapers. In cross-examination, he admitted that Ext. P1 would have



been put to use in the campaigning for the respondent and that was why it was included in Ext. P2 return filed before the District Election Officer. He said that he does not know whether there was any accused in the Onakkoor incident case, who was or is an absconder. He also does not know whether then accused persons in that case are absconding. In cross-examination, he explained his statement in the proof affidavit—that the statements in Ext. P1 regarding the criminal case are true—by stating that all that he meant by that statement was that a criminal case in relation to that incident was registered and that a member of the then personal staff of Sri T. M. Jacob was an accused person and he did not intend to show by referring to Exts. R9 and R10 that the statement in Ext. P1, that the accused persons are absconding, is true. He also stated that the identity of the accused persons was known to him only after the papers relating to that criminal case were taken after the commencement of this election case. He further stated that the fact that the second accused in that case who was in the personal staff of Sri T. M. Jacob was removed from the array of accused persons during the course of investigation, was not known to him earlier and he knew about it only when he perused Ext. R11 file relating to that case, which, as already noticed, had been perused by him only after commencement of this election case. He also vouchsafed that Exts. R10 and R11 do not contain any statement that Sri Scaria, the second accused in that case is an absconder.

57. As against the aforesaid deposition of his alter ego-R. W. 1, the respondent, as R. W. 4, has stated, as already noticed, that if the allegation of harbouring an accused is levelled against a Minister or any person in connection with an accused, who was already enlarged on bail, such allegation would be a serious one. He also stated that any wrong public statement as to whether a person involved in a criminal case is an absconder is wrong particularly when the matter is pending in court.
58. Ext. P10 bail order was issued by this Court on 2-1-2006, granting bail to the second accused Sri Scaria as regards the said criminal case, more than three months before the election. The said order for pre-arrest bail was granted after noticing that the investigation of the case was already over and final report filed.

59. As already notice, none of the documents relating to the Criminal case (Onakkoor incident) would show that Sri Scaria was an absconder. Ext. R10, the FIR was registered on 24-2-2002, more than three years before the notification of the election in question. Ext. R11 charge sheet is dated 22-10-2005 while the case of the respondent and his witnesses is that Ext.P1 was printed only on 25-4-2006. Ext. R11 would show that though Sri Scaria was initially arrayed as an accused, he was removed from the array of accused during the course of investigation and was later on brought in. Ext.R11 records the fact that the said person, among others, has not been arrested. It is also nowhere stated in Ext. R11 that those persons are absconding.
60. The respondent was set up by a recognised national political party. I had the benefit of hearing his evidence and I take him as the person of prudence, caution, commonsense and fairly well informed of how people understand publications and other modes of communications of information and opinion. His election agent R. W. 1 is a political activist for the last 25 years, going by his deposition. The nature of duties and responsibilities attached to his official position as the LDF Election Committee Convener as disclosed by him during his cross-examination establishes that he is a person of fair exposure. R. W. 3 stated that Ext. P1 was prepared by important workers of LDYF, including him. He stated that Question No. 2 in the third page of Ext. P1 regarding the Onakkoor incident was so crafted to give the message to the people that Sri T. M. Jacob is involved in harbouring the accused persons in that criminal case, who are evading arrest and are absconders. He is an advocate. He said that he had seen the documents relating to that case before Ext. P1 was drafted. If so, did he not read them? Could he not notice from the charge-sheet Ext. R11 that the second accused Sri Scaria was removed from the array of the accused persons during the course of investigation and was brought in only later on? Did he not read those documents to notice that the accused persons were not recorded as absconders? Did he not notice that the accused persons were granted bail by this Court in January 2006 following the filing of Ext. R11 charge-sheet? Leaving aside that R. W. 3 is an advocate, is this the quality of enquiry that is expected from an ordinarily prudent person while throwing an allegation against a person, that too, one who had been holding a

public office? To call a person an absconder, if he is not one so, is itself bad. To call yet another (Sri T. M. Jacob) a person who had been harbouring an absconder or aiding one to continue an absconder is still bad. I am not prepared to swallow the statement of R. W. 3 that the accused person in Onakkoor incident was described as an absconder in Ext: P1 merely as a part of the “style of the pamphlet”, because he was recorded as not arrested.

61. Printed and published materials as well as information given through different media as part of the election propaganda convey lot of information, ideas and opinions to the electors. They may some times be charged with strong opinion; or even over charged with coloured opinions, but the requirement of the law is that even if it is permissible to overstep while making a political comment, it is impermissible to do so, if the statement touches on the personal character and conduct of a candidate. To harbour an accused person or an absconder is no part of the political character or conduct of an individual. To accuse a person of having harboured an accused, an absconder, is one touching the personal character and conduct of a person. Therefore, for one to believe that he is making a true statement or for one to believe that the statement that he is making touching the personal character and conduct of a candidate is not false, he has to necessarily show that he had exercised ordinary prudence and reasonableness of a common man in the matter of understanding the true facts before throwing a slush of criticism touching the personal character and conduct of a candidate. This has not been done in this case.
62. R. W. 2-Sri Jinson V. Paul is the Mandalam Secretary of AIYF and the Mandalam Chairman of the LDYF. He said that Ext. P1 contains request to cast votes for respondent, the LDF candidate. Before conceding to the question that the reference made in Question No. 2 in Ext. P1 is Sri T. M. Jacob, he attempted to take the stand that the questions in Ext. P1 were not addressed to any particular person. Later on, he stated that Question No. 6 in Ext. P1 related to corruption charges levelled by Sri T. M. Jacob and the person referred to as MLA in Question No. 5 is Sri T. M. Jacob. Ultimately, he conceded that Question Nos. 1 to 6 in page 3 of Ext. P1 are against Sri. T. M. Jacob and such queries reflected that answers were expected from him. Regarding Question No. 2 relating

to the Onakkoor incident, he said that the reference there in was to Sri Scaria and the statement that he is an absconder was made because, he was not arrested. He asserted of having seen the police papers relating to the incident from Sri Joseph Babu and that he cannot deny if there are records in the court to show that Sri Scaria was granted anticipatory bail in January, 2006. He also stated that the intention of Question No. 2 in page 3 of Ext. P1 is that it was bad for a member of the personal staff of Sri. T. M. Jacob, while a minister, to be involved in the Onakkoor incident. He further stated that the said question will create an impression in the voters that it was bad, if such an incident had taken place.

63. R. W. 4, the respondent, stated that all the six questions in page 3 of Ext. P1 are addressed to Sri. T. M. Jacob and the said questions also carry the concept of a query being posed to UDF. He deposed that the said questions are of a personal nature and of a political colour. He stated that to harbour an absconder in relation to a crime is neither good conduct nor part of political life and if done, it is essentially a matter affecting the personal conduct of that person. He said that he had not seen the relevant papers in relation to the Onakkoor incident and Ext. P1 might be the reflection of the local discussions touching that incident and it might be touching the conduct of Sri T. M. Jacob. He stated that he had not examined the records of that criminal case before the written statement was filed and had not ascertained the reason why the accused persons 1 and 2 in that criminal case were not arrested. He had not enquired, even before filing the proof affidavit, as to whether Sri Scaria was granted bail by any court in connection with the Onakkoor incident. He further said that if Ext. P1 contains a wrong statement, though it is published supporting his candidature, it is wrong.
64. Following an analysis of the aforesaid in the context of the entire materials on record, it can be seen that neither R. W. 3, the person who owned up of having been involved in the drafting of Ext. P1 nor R. W. 2, the person who is stated to have been involved in obtaining Ext. P1 ready for publication, has a case that the personal imputations made against Sri T. M. Jacob therein were made after due and proper enquiry as is expected of a reasonably prudent man placed in the situation. R. W. 1, the election agent, though he attempted to wash his

hands off, as regards the publication of Ext. P1, cannot do so because, he is shown to have disbursed the amounts for the expenditure for printing Ext. P1. I have also held against the defence version that Ext. P1 was printed by LDYF and not Convener, LDF Election Committee-none other than R. W. 1. He also does not vouchsafe of having cross-checked the veracity of the personal allegations levelled against Sri T. M. Jacob in Ext. P1, at any time, at least, before the responsibility of Ext. P1 fell on him by having disbursed the expenditure incurred for printing Ext. P1 and also by showing it in the election expenditure of the respondent. The respondent also cannot disown the responsibility and liability for the publication of Ext. P1 after having treated such expenditure as part of his election expenditure spent by making the payment through his alter ego, the election agent, namely, R. W. 1. It is also the case of the respondent, as already noticed, that none of the material statements in Ext. P1 touching the personal character of Sri T. M. Jacob was cross-checked before the publication of Ext. P1. In fact, the stand taken is that relevant materials were searched and reached at only after the filing of the written statement. Therefore, R. W. S. 1, 2, 3 and 4 had no grounds referable to common course of human conduct, reasonableness or common sense to be held to have believed that the said statement in Ext. P1, touching the personal character of Sri T. M. Jacob is false or not to be true.

65. On the issue relating to the case based on Question No. 2 in the third page of Ext. P1, the learned senior counsel appearing for the noticees and the learned counsel for the respondent argued at the final hearing that a plain reading of that statement in Ext. P1 does not, in any manner, connect that question as one addressed to Sri T. M. Jacob and the identity of the person who has not been arrested in connection with the alleged incident at Onakkoor is also not identified. Therefore, the contents of that statement were characterized as an innuendo and hence, it is argued that even if that question was addressed, the issue could not be tried and decided in the absence of definite pleading in the election petition disclosing the identity of the person about whom the allegation is made and the identity of the accused in the Onakkoor case and the connection between that person and P. W. 30 Sri T. M. Jacob. In support of this contention, specific reference was made to the decision of the Hon'ble Supreme Court of India in **M. J. Zakharia Sait, v.**

**T. M. Mohammed** [(1990) 3. SCC. 396] and it was argued that the innuendo meaning must be specifically pleaded and proved by stating the special or extrinsic facts in the knowledge of the candidate filing the election petition, explaining the innuendo. Reference was also made to **Mahendra Singh, v. Gulab** [(2005) 4 SCC 522] that statements which are not specific were insufficient to put an allegation of corrupt practice to trial. **R. P. Moidutty v. P. T. Kunju Mohammad** [(2000) 1 SCC 481] was referred to state that it is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the courts and that is why the election of a successful candidate is not to be set aside lightly. It was pointed out that a heavy onus lies on the election petitioner seeking to set aside the election to make out a clear case both in pleadings and at trial. The decision in **M. J. Zakharia Sait (supra)** which is directly one referring to a case of an innuendo, was one where the Apex Court concluded that the identity of the person covered by the innuendo was not pleaded and established. It was held that in a case where a corrupt practice depends upon the statements which are implied, a statement of material facts will not be complete without the statement of such implicit facts.

66. In the case in hand, the election petition is by a voter and not a candidate. He pleaded that Ext. Pl is published by Sri O. N. Vijayan, the election agent of the respondent. He produces Ext. Pl as Annexure-A along with the election petition. The English version of that document is produced as Annexure-A1 along with the election petition. Reference is made in the election petition to the contents of Annexure-A and it is pleaded that in that document, “false personal accusations and references, which are wholly untrue, are made against the main rival candidate, Sri T. M. Jacob.” In paragraph 3 of the election petition, it is pleaded that “the reference in Annexure A that Sri T. M. Jacob has harboured a member of his personal staff and that he is an absconder escaping arrest is totally false as he had appeared in Court and granted bail.” With these pleadings by the election petitioner, the respondent stated in paragraph 7 of his written statement as follows:

“The statements made in paragraph 3 of the Election Petition are denied as they are not true. The allegation of the petitioner that the statements in Annexure-A amounts to character assassination of the UDF candidate, Shri T. M. Jacob and is an accusation against his private

and personal character is denied, as it is not true. It is submitted that, the Deputy Superintendent of Police, Crime Branch CID Ernakulam, has registered a Crime under Sections 143, 147, 148, 150, 341, 324, 326, 212, 307 and 427 read with Section 149 of the Indian Penal Code with respect to an incident in which an attempt to murder some persons who had left the party of Shri T. M. Jacob and joined the Indian National Congress, was committed. The said case is still pending trial. The respondent produces herewith marked Annexures B-3, B-4 and B-5 respectively, photostat true copies of the F.I.R. dated 24-2-2002, the statement of Shri Joseph Babu under Section 161 Cr. P.C., and the charge sheet dated 22-10-2005 in the said case. It is submitted that, the 1<sup>st</sup> and the 2<sup>nd</sup> accused in the said case are members of Shri T. M. Jacob's party. The 2nd accused, Shri Skaria s/o Mathai, Thevarmadathil House, Thirumarady Village, was a member of the personal staff of Shri T. M. Jacob, who was a Minister at that time. He had not been arrested by the police, though his whereabouts were known to all."

67. The fundamental purpose of the rules of pleadings, including in quasi criminal matters, is to place the case before the Court and to the notice of the person against whom an allegation is made. The connection between the Onakkoor incident and a person, who was then in the personal staff of Sri T. M. Jacob is explicit in the election petition. This is beyond doubt because, the respondent had himself understood the pleadings in such a manner and had responded by placing his written statement as quoted above. With these pleadings on record, even the respondent as a witness and his witnesses R. W. 1, R. W. 2 and R. W. 3 had no doubt in their mind regarding the plea of the election petitioner when they gave evidence even before notices were issued to R. W. 1, R. W. 2 and R.W.3 under the proviso to Section 99 (1). They, in particular, R. W. 2 and R. W. 3 were categorical that the allegations made by them in Ext. P1 were in relation to Sri T. M. Jacob, P. W. 30 and Sri Scaria, a person who was in the personal staff of Sri T. M. Jacob while he was a Minister and still further that the reference was to the criminal case in which Sri Scaria was an accused person. Even in answer to the show cause notices, the noticees, namely, R.W.1, R. W. 2 and R. W. 3, cannot be heard to contend that they never understood the pleading of the

election petitioner. This is so because it is their version before this Court as R.W.1, R.W.2 and R.W.3 that the allegations in Question No. 2 in page 3 of Ext. P1 were made with reference to P. W. 30 Sri T. M. Jacob and Sri Scaria, in relation to the Onakkoor incident. Their intention is also categorically established. The respondent also spoke about the impact of such an allegation P. W. 30 Sri T. M. Jacob was treated as a rival candidate by the respondent. Looking at Ext. P1 as a whole, in the context and setting in which the different statements therein are made, the clear nexus between the persons with reference to whom the second question in page 3 of Ext. P1 is crafted is sufficiently pleaded particularly because the original of Ext. P1 was produced as Annexure-A along with the election petition and in view of the specific pleading, as already noticed, that “the reference in Annexure A that Sri T. M. Jacob has harboured a member of his personal staff and that he is an absconder escaping arrest is totally false as he had appeared in Court and granted bail.” Even if the laws relating to pleadings in election petitions are more stringent and are statutorily regulated, requiring the satisfaction of specific pleading regarding the material facts and full particulars of the corrupt practice, such bench mark has been satisfied by the pleadings in this case, particularly when the respondent, rather than pleading the non disclosure of a cause of action, had specifically pleaded in paragraph 7 of his written statement regarding the incident in relation to which the said allegation rests.

68. Question No. 2 in page 3 of Ext. P1 reads as follows :

“A member of your personal staff who had attempted to murder Thirumaradi Congress Mandalam President P. J. Baby, Joseph Babu and K. P. Jacob at Onakkoor is still continuing as an absconder. Can you give an answer to the ordinary Congressmen in this regard ?”

This question is admitted and proved to have been addressed to Sri T. M. Jacob. It finds the obvious meaning that a member of the personal staff of Sri T. M. Jacob, while a minister, had attempted to murder Thirumaradi Congress Mandalam President Sri P. J. Baby, Sri Joseph Babu and Sri K. P. Jacob at Onakkoor and that the said person is still continuing as an absconder. By making such a statement and addressing it to Sri T. M. Jacob, the query as to whether he can give an answer to



the ordinary Congressmen in this regard would ordinarily be understood as conveying the fact that the alleged victims of the said incident are Congressmen and the accusation is patently that, one of the accused persons who was a member of the personal staff of Sri T. M. Jacob, while a minister, was not only absconding but Sri T. M. Jacob is responsible for letting the said person as an absconder. To an ordinarily prudent man, a literate elector in the Kerala context, it is obvious that the suggestion in the said question is that a member of the personal staff of Sri T. M. Jacob was involved in an attempt to murder Congress-men and that Sri T. M. Jacob had either harboured or otherwise aided the said accused person to remain an absconder. To be involved in a criminal case of the nature of the Onakkoor incident, is itself bad, even according to the witnesses of the respondent. It is still worse, if the accused person is successful in being an absconder, that too with the blessings of a minister. The person who harbours or otherwise provides aid for the accused person to continue as an absconder is all the more tainted. The said question would necessarily send the message to any elector who reads Ext. P1 that Sri T. M. Jacob was instrumental in ensuring that Sri Scaria remained an absconder, though involved in the Onakkoor incident of attempting to murder the Thirumaradi Congress Mandalam President and others. The further suggestion that the said accused person remained an absconder also definitely reflects upon the personal conduct of Sri T. M. Jacob, while a minister, because, if Sri Scaria was an absconder, there would have been no reason why Sri T. M. Jacob, as a minister, could have let him continue as a member of his personal staff. It has also to be immediately remembered that Sri T. M. Jacob was contesting as a member of the DIC(K), then a constituent of the UDF, of which the Congress was also a constituent. So much so, the clear message contained in the second question in page 3 of Ext. P1 is an exhortation to vote for the respondent, who is a rival candidate of Sri T. M. Jacob, on the ground that Sri T. M. Jacob had harboured Sri Scaria, an absconder, a person accused in the criminal case relating to the Onakkoor incident. The overwhelming material, even in defence, is that question No. 2 in page 3 of Ext. P1, relating to the Onakkoor incident is a matter affecting the personal character of Sri T. M. Jacob. It is so held.

69. Reverting to question No. 6 in page 3 of Ext. Pl, it reads as follows :

“6. Do you still stick to the Rs. 1300 crore corruption charges levelled by you against Oommen Chandi ?”

70. The said question, even according to the witnesses of the respondent, holds out a query to Sri T. M. Jacob as to whether he still stands by the corruption charges levelled against Sri. Oommen Chandy to the tune of Rupees 1300 crores. Sri Oommen Chandy was the Chief Minister demitting office on completion of the term which gave way to the Assembly Election in question. Sri Oommen Chandy and Sri T. M. Jacob belonged to UDF, as members of two components of that conglomeration to charge Sri T. M. Jacob of having accused Sri Oommen Chandy with corruption, be it of Rupees 1300 crores or otherwise, is to slur him before Congress-men whose votes he could reasonably expect, going by the political understandings in the election. To accuse a person with corruption and still further, to accuse a person who is leading one's own faction, with corruption, that too, to the tune of Rupees 1300 crores, is one touching the personal character of, in this case, Sri T. M. Jacob, unless it is shown that Sri T. M. Jacob made such allegations against Sri Oommen Chandy.

71. Sri T. M. Jacob, as P. W. 30, stated in Chief Examination that he had supported a no-confidence motion against Sri Oommen Chandy and while speaking in support of the no-confidence motion, he had not levelled any allegation of corruption personally against Sri Oommen Chandy. Facing cross-examination on that aspect, he stated that he had not made any statement in the floor of assembly criticising Sri Oommen Chandy personally during the discussion of the no-confidence motion. He also stated that he had seen in newspaper reports, including Exts. R3, R4 and R5, that he had charged Sri Oommen Chandy with corruption. The different allegations, according to him, were not levelled for the first time by him and he had in fact relied on a report of Inspector General Sri Senkumar regarding the volume of corruption. These newspaper reports were placed by him in the House and he wanted the Government to conduct an enquiry. He said that the publication of Ext. Pl has affected a good section of electorate having attained 18 years of age since they would not have had seasoned ideas and they were easily influenced by the contents of Ext. Pl.

72. To accuse a person of having charged another with corruption, is also a matter affecting the personal character of the maker of such accusation. This can be easily demonstrated referring to the facts of this case. Sri Oommen Chandy is himself a politician. He was the Chief Minister demitting office, leading to the election. He was the Chief Minister, while Sri T. M. Jacob is accused of having charged him with corruption. That accusation is alleged to have been made in the floor of the Assembly. If, as a matter of fact, Sri T. M. Jacob had not made an accusation of corruption against Sri. Oommen Chandy, the allegation that Sri T. M. Jacob had made such an accusation is itself to charge Sri T. M. Jacob of having made such a statement affecting the personal character and conduct of Sri Oommen Chandy. If that were so, for a responsible politician to make a criticism of another politician of having committed a crime, that too, the crime of corruption, which is an anathema to political life, is itself a serious allegation and if one makes such allegation without any basis, it is still worse. So much so, if a person is accused of having made a personal allegation and if the making of such an allegation is not proved, then it amounts to an attack on the personal character of the alleged maker, in this case, Sri. T. M. Jacob. It is not part of the political character or any character other than the personal character of Sri T. M. Jacob to have made a personal accusation against Sri Oommen Chandy of having committed corruption.
73. As P. W. 30, Sri T. M. Jacob had asserted that he had not made any personal allegation against Sri Oommen Chandy. His deposition appeared to suggest that his version is that he was only addressing Sri Oommen Chandy to make an answer regarding the corruption charges levelled by P. W. 30 on the basis of certain reports of a Police Officer Sri Sen Kumar. While examined as X. W. 1, after the noticees had filed their replies to the show cause notices, faced with Ext. XI Report of the proceedings of the Legislative Assembly regarding the speech in question, the said witness took the stand that he only addressed Sri Oommen Chandy by calling him by name and he was not making any allegation of corruption against Sri Oommen Chandy. He took the stand that the version recorded as Ext. XI is an uncorrected version and it was recorded by a stenographer when there was hubbub in the Assembly. He also stated that he does not remember having made any statement which was marked

as Ext. X1 (c). Faced with the portion Ext. X1 (b), Sri T. M. Jacob, as X. W. 1, stated that though it is recorded that he had stated that Sri Oommen Chandy could be shivering all over on account of the possession of the bribe money, he only meant such a statement in the entire context of the allegation levelled against the Government led by Sri Oommen Chandy on the basis of the report of Sri Sen Kumar.

74. Ext. X1, as already noticed, is the Full Report of the Proceedings of the Assembly prepared by the Secretary of the Legislature. Ext. X1, on the face of it, states that it is an official report. Rule 308 (iii) of the Rules of Procedure and conduct of Business in the Kerala Legislative Assembly enjoins that the Secretary is duty bound to prepare and publish such full reports. Section 78 of the Evidence Act deals with proof of “other official documents”. It provides that the public documents enumerated there in may be proved as stated therein. The second among the enumerations in section 78 deals with the proceedings of the Legislatures. It provides that the proceedings of the Legislatures may be proved by the journals of those bodies respectively or by copies, purporting to be printed by order of the Government concerned. Ext. X1 is one such document. As already noticed, it is a document prepared in terms of a provision among the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly. No material is forthcoming to dislodge the veracity of the contents of Ext. X1.

75. Now, I shall advert to the contents of Ext. X1, in particular, Exts. X1 (a) to X1 (d) since that document is in Malayalam and an English version of the same has also been obtained, such translation being by the Head Translator of this court.

76. Ext. X1 (a) reads as follows :

“At the rate of 7 lakh Rupees, for 30 years the amount comes to Rupees 2 crores and 10 lakhs. If such signboards are put at 350 locations and calculating at the rate of Rupees 7 lakhs, Shri Oommen Chandy has done an embezzlement of Rs.735 Crores.”

Ext. X1(b) is as follows :

“Can Shri Oommen Chandy remove this single board? Shri Oommen Chandy would tremble from head to toe. The reason is that

the bribe is in your hand. Receipt of bribe is also behind this. This is it, it is not possible for you. Does Shri Oommen Chandy have any qualms about withdrawing case(s)? There is no qualm to withdraw cases,”

Ext. XI (c) reads as follows :

“I shall conclude by mentioning one more thing. The Manager of the Special Judge’s Court is summoned by the office of Shri Oommen Chandy. This order is handed to the manager. It is addressed to the Special Judge. The Special Judge warns the manager. Can Shri Oommen Chandy point out an instance of a Government Order withdrawing a case being given to a Vigilance Judge so far in the history of Kerala?..... (Pandemonium). .... Many do withdraw cases. That should be submitted there by the Government Pleader. Subsequently the judge should examine it. It is the judge who should withdraw it, not that the Vigilance Judge is posted there to hear the order issued by you. Shri Oommen Chandy should understand that, violating the procedure, what has happened to you Shri Oommen Chandy, you are in the stupor of arrogance, you are impudent, you are arrogant, you are haughty. The attitude of “I, I, I”, is it not this what you are showing Shri Oommen Chandy?..... (Pandemonium).....I have already said here. I got that paper, Shri Oommen Chandy’s..... (Pandemonium) .....

Ext. XI (d) is as follows:

“Sir, Bajju George is an agent who collects money for this Smart City and for Sri Oommen Chandy. The first instalment of it has come via. Bombay. A constant companion of Sri Oommen Chandy, I don’t mention the name. It is through this person that the money has come here. In our State corruption to the magnitude of 300 Crore Rupees has been committed under the cover of this Gyantri Sign Board, and like wise in the name of this Smart City. Is Sri Oommen Chandy ready to institute an inquiry into this? Will this be inquired into by the Assembly Committee? This Government have been immersed in corruption. Sri Oommen Chandy has only one agenda. How much he can garner up when he exists, how much destruction he can bring to the State, plunder this state, I strongly support the no confidence motion brought against the Oommen Chandy Government which attempts to do so.”

77. Ext. X1, as a whole, and Exts. X1 (a) to Ext. X1 (d), in particular, indisputably, contains allegations levelled against Sri Oommen Chandy of embezzlement and allied allegations of corruption. So much so, the fact that P. W. 30 (X.W.1) Sri. T. M. Jacob had levelled allegations of embezzlement and corruption against Sri Oommen Chandy in the floor of the Assembly as recorded in Ext. X1 stands.
78. Hence, the fact that Ext. P1 contains Question No. 6 in page 3 thereof requiring Sri T. M. Jacob to answer as to whether he still stands by the allegations of corruption levelled against Sri Oommen Chandy cannot be treated as a false allegation of P. W. 30 (X.W.1) Sri T. M. Jacob of having made allegation of corruption and embezzlement against Sri Oommen Chandy. Hence, Question No. 6 in page 3 of Ext. P1 cannot form the foundation of any corrupt practice under Section 123 (4) of the Act. It is so found.
79. Now, I shall advert to the contents of Ext. P1 which are shown to affect the personal character of Sri T. M. Jacob. Page 3 of Ext.P1 contains six questions under the caption “CHARIOT RIDE OF DEVELOPMENT TRICKERY WITH THE RIDDLES OF A QUARTER CENTURY”. Out of the said six questions, the thrust of the case revolves on Questions 2 and 6.
80. Ext. P1 (ii) is a statement in bold letters towards the end of Ext. P1 pamphlet “RECOGNISE THE SHAMELESS HYPOCRITE OF DEVELOPMENT TRICKERY.....REACT AGAINST THE DECEIVER OF THE PEOPLE.....”
81. The learned counsel for the respondent urged that the contents of Ext. P1 are by way of replies to the claims in Ext. R1, a publication made by the convener of the Election Committee of the UDF highlighting what are enumerated therein as achievements of Sri T. M. Jacob and that the contents therein, when read as a whole, do not project any personal attack on Sri T. M. Jacob. He further urged that whatever has been characterised by the petitioner as a statement affecting the personal character and conduct of Sri T. M. Jacob, in Ext. P1, is made on the basis of bona fide information and material and therefore, there was no reason to hold that the publication of Ext. P1 was made believing that the said statements are false or without believing that they are true.

82. Ext.P1, taken as a whole, shows that it is a pamphlet drafted, printed and published during the period of the election. Going by the stand of the respondent that Ext. P1 would have been published by way of replies to Ext.R1, which is nothing but the versions spoken to by R.Ws.2 and 3, in all reasonableness, there is no doubt that Ext. P1 was published and circulated. Coupled with these is the admission of R. W. 3, which has already been noticed, that it was published. The front page of Ext. P1 gives a photograph of the respondent and Ext. P1 contains explicit statements exhorting the electors to vote for the respondent. Ext. P1 contains the symbol in which the electors are called upon to vote. So much so, I have no hesitation to brush aside the attempt of R.Ws.2 and 3 to state that Ext. P1 was not issued for the purpose of canvassing votes for the respondent. In fact, that stand would even contradict the statements of the respondent as R.W.4 and his election agent as R. W. 1. R. Ws. 2 and 3 stated that the mode of presentation of Ext. P1 is a style of presentation of ideas and the predominant intention of issuing Ext. P1 was to highlight the problems of the youth. Different queries are raised through out in Ext. P1. Some of them can be related to the contents of Ext. R1. However, even the respondent's witnesses have conceded that many of the queries particularly, the six questions posed in the third page of Ext. P1 are not referable to any statement in Ext. R1. Be that as it may, the statement in bold letters in the last page of Ext. P1 "RECOGNISE THE SHAMELESS HYPOCRITE OF DEVELOPMENT TRICKERY..... REACT AGAINST THE DECEIVER OF THE PEOPLE....." is referable to the entire contents of Ext. P1 and it is placed in Ext. P1 as being its conclusion to the contents of Ext. P1. To call a person a hypocrite, as urged by R.W.4 in his evidence, could be situational. To go a step further, to call one a shameless hypocrite, may also be a situation. If one is to be a shameless hypocrite of development trickery and if his claims are shown to be trickery, then to call a person shameless hypocrite of development trickery, by itself, would not amount to a statement of fact in relation to the personal character or conduct of a person, but may, at the most, amount to an overzealous and charged description, provided it confines to the realm of political and other shades of character and conduct of a person, which may not amount to personal character and conduct. The same would be, so far, the request to react against the deceiver of the people concerned. But, when such a tailpiece is placed as a conclusion after making different statements of which one or a few is/are referable exclusively to the personal character and conduct of a particular

person, the tailpiece takes the character, colour and shade of amounting to a criticism on the basis of a statement of fact in relation to the personal character and conduct of the said person. Viewed in that angle, the tail-piece of Ext. P1, namely, the exhortation to “recognise the shameless hypocrite of development trickery.....react against the deceiver of the people.....” amounts to a statement of fact affecting the personal character and conduct of Sri T. M. Jacob. This is because, tail-piece also depends upon the questions contained in Ext. P1 including statements of facts in relation to the personal character and conduct of Sri T. M. Jacob. The said tail-piece amounts to a statement of facts affecting the personal character and conduct of Sri T. M. Jacob in the setting in which it is placed, referable to Question No. 2 in page 3 of Ext. P1.

83. The learned counsel for the respondent, at the final hearing, also argued that in view of the contents of section 100 (1) (b) of the Act, if the corrupt practice is committed by any person other than the returned candidate or his selection agent, such corrupt practice cannot be treated as one committed with the consent of the returned candidate or his election agent unless such consent precedes the Commission of the corrupt practice. On facts, it is argued that there is no material on record to hold that the respondent and his election agent, namely, R.W.1, were involved at any point of time before taking over the responsibility of having spent the funds for the printing of Ext. P1 and also the responsibility for that document by showing the expenditure incurred for its publication as an item of expenditure incurred by the candidate, namely, the respondent and describing R. W.1 as the payee. On such premises, it is contended that the words “with the consent” occurring in section 100(1) (b) of the Act have to be construed only as available in a case where the consent of the respondent or his election agent precedes the actual Commission of the corrupt practice in question.
84. As already found, the actual Commission of the corrupt practice in question gets connected to the respondent and his election agent, namely, R.W.1, by the responsibility that inheres on R. W. 1 as the election agent of the respondent of having been the payee for the printing of Ext. P1. The election agent is none other than the alter ego of the candidate. The laws relating to election as are specifically contained in the Act are primarily intended to achieve a free and fair result of the electoral process of this great democracy and maintenance of purity of that process includes the requirement that the candidates are not



subjected to character assassination and other methods, particularly those enumerated in section 123 (4). The particular purpose for making the publication of material in violation of Section 123(4) of the Act, an incriminating exercise for the purpose of section 100, is essentially to safeguard a candidate from such attack, as is sought to be prevented by such legislation. When a person becomes a candidate for an election, it is his bounden duty to ensure that no corrupt practice is committed either by him or by his election agent or by any other person either with his consent or with the consent of his election agent. Therefore, if a wrong committed by a person, who is connected with the candidate or his election agent is shown to have been enjoyed or taken over by the candidate or his election agent, it necessarily does not call for any further judicial dissection to discern whether the candidate or his election agent was wilfully involved in the process. Therefore, the question whether actual consent had preceded the commission or whether it was *anex post facto* consent for a wrong, the fruit of which would have been enjoyed or not, is immaterial. If this contention on behalf of the respondent is accepted, that will provide in the law, a loophole, which is just not there.

85. The foregoing discussions and reasons lead to the following conclusions:

- (i) Question No. 2 in page 3 of Ext. P1 amounts to a statement of facts affecting the personal character and conduct of Sri T. M. Jacob. The said statement in Ext. P1 is false.
- (ii) The tail-piece of Ext. P1, namely, the exhortation to “recognise the shameless hypocrite of development trickery.....react against the deceiver of the people.....” amounts to a statement of facts affecting the personal character and conduct of Sri T. M. Jacob in the setting in which it is placed, referable to Question No. 2 in page 3 of Ext. P1.
- (iii) The publication of Ext. P1 containing the aforesaid statements has been made by the respondent, he having owned up the responsibility of the said publication by having its expenditure met by making payment through his election agent and showing such expenditure as an expenditure incurred by him in the return filed under Section 77 of the Act and by R.W.1, the election agent of the respondent and R.W.2 and R.W.3.

(iv) Publishers of Ext. P1, namely, the respondent and R.W.1, his election agent and those who were involved in the preparation, publication and distribution of Ext. P1, namely, R. Ws. 2 and 3, had no reason to believe that the aforesaid statements are true and had every reason to believe that they are false.

(v) The aforesaid statements made in Ext. P1, were reasonably calculated to prejudice the prospects of Sri T. M. Jacob in the election.

(vi) Question No. 6 in page 3 of Ext. P1 is not a false statement in as much as the materials on record disclose that P. W. 30 Sri T. M. Jacob had levelled corruption charges against Sri Oommen Chandy and therefore, the query to Sri T. M. Jacob in Ext. P1 as to whether he still stands by those allegations is neither groundless nor false.

86. On the basis of the aforesaid findings, it is held that the respondent and his election agent R.W.1 and two other persons, namely, R.W.2 and R.W.3, with the consent of R.W.1, the election agent of the respondent and with the consent of the respondent, have committed corrupt practices in terms of section 123 (4) of the Act and the election of the respondent is, therefore, liable to be declared void as per sub-section (1) (b) of Section 100 of the Act. It is so held.

87. In the result, this election petition is allowed declaring that the election of the respondent from No. 79 piravom LA constituency to be a member of the Kerala Legislative Assembly, the polling for which was held on 29-4-2006, is void. It is also recorded that R. W. 1, R. W. 2 and R. W. 3, namely, Sri O. N. Vijayan, Sri Jinson V. Paul and Sri P. G. Manu, apart from the respondent, have been proved at the trial to have been guilty of the corrupt practice under Section 123 (4) of the Act of the nature as found by this Court in this order. No costs.

The substance of this decision shall be communicated to the Election Commission and to the speaker of the Kerala Legislative Assembly as required by section 103 of the Act. An authentic copy of this order shall also be sent to the Election Commission as prescribed.

(Sd.)

THOTTATHIL B. RADHAKRISHNAN,  
*JUDGE.*

*Petitioner's Witnesses :*

- P. W. 1—A. Narayanan
- P. W. 2—Sunil Mathai
- P. W. 3—Eby N. Elias
- P. W. 4—Joy Mullankuzhiyil
- P. W. 5—Joshy K. Paul
- P. W. 6—R. Pushparajan
- P. W. 7—Raju John
- P. W. 8—John Thomas
- P. W. 9—Rajesh Thampi
- P. W. 10—M. T. Issac
- P. W. 11—Chandramohan, K. S.
- P. W. 12—Biju, P. A.
- P. W. 13—K. S. Babu
- P. W. 14—M. M. Kuriakose
- P. W. 15—Jessy Peter
- P. W. 16—Fr. Rejo Nirappu Kandam
- P. W. 17—M. O. Baby
- P. W. 18—Anoopunni
- P. W. 19—T. V. Thomas
- P. W. 20—Molly Joseph

P. W. 21—Domy Chirapurathu

P. W. 22—P. U. Raju

P. W. 23—P. G. Shaji

P. W. 24—Lalu Varghese

P. W. 25—P. M. Raju

P. W. 26—K. Prasada Chandran Pillai

P. W. 27—Dr. K. V. Kurian

P. W. 28—M. K. Joseph

P. W. 29—M. Rajendran

P. W. 30—T. M. Jacob

P. W. 31—T. K. Alexander

*Respondent's Witnesses:*

R. W. 1—O. N. Vijayan

R. W. 2—Jinson V. Paul

R. W. 3—P. G. Manu

R. W. 4—M. J. Jacob

*Court Witnesses [Persons to whom Notices under Proviso to Section 99 (1) of the R. P. Act were issued]:*

X. W. 1—T. M. Jacob

X. W. 2—Baby Mathew

X. W. 3—Lyju P. Varghese

X. W. 4—C. K. Ramachandran

X. W. 5—A. Narayanan

X. W. 6 (R. W. 3)—P. G. Manu

X. W. 7 (R. W. 2)—Jinson V. Paul

X. W. 8 (R. W. 1)—O. N. Vijayan

*Petitioner's Exts:*

Ext. P1—True Copy of the Leaflet Published By Convenor, LDF Election Committee (P. W. 1)

Ext. P1(i)—True Copy of the Paragraph in Ext. P1 Relating to Thirumarady

Ext. P1(ii)—True Copy of the sentence in bold letters in the 6th page of Ext. P1.

Ext. P1-A—Model Conduct for the Guidance of political parties and Candidates. (P. W. 26)

Ext. P2— Affidavit Submitted by M. J. Jacob before the District Election Officer. (R. W. 1).

Ext. P3— News item in Mathrubhumi Daily dated 6-4-2006. (R. W. 3)

Ext. P4—News item in Malayala Manorama dated 6-4-2006.

Ext. P5—Abstract Statement of Election Expenses.

Ext. P6—News item in Mathrubhumi Daily dated 19-4-2006. (R. W. 4)

Ext. P7—News item in Malayala Manorama Daily dated 23-4-2006.

Ext. P8—News item in Deshabhimani Daily dated 9-4-2006.

Ext. P9— Form No. 8 - PW1 Proved.

Ext. P10—Copy of Judgment dated 2-1-2006.

*Respondent's Exts:*

Ext. R1—Pamphlet issued by UDF to Commemorate the Silver Jubilee of Sri T. M. Jacob

- Ext. R2—Leaflet of M. J. Jacob (P. W. 1)
- Ext. R3—News item in Malayala Manorama Daily dated 20-7-2005 (P. W. 30)
- Ext. R4—News item in Mathrubhumi Daily dated 20-7-2005 (P. W. 30)
- Ext. R5—News item in Deshabhimani Daily dated 20-7-2005 (P. W. 30)
- Ext. R6—News item in Malayala Manorama Daily dated 25-7-2006 (P. W. 30)
- Ext. R7—News item in Mathrubhumi Daily dated 25-7-2005 (P. W. 30)
- Ext. R8—News item in Dashabhimani Daily dated 25-7-2005 (P. W. 30)
- Ext. R9—Leaflet of C. P. Saju (R. W. 1).
- Ext. R10—FIR (R. W. 1).
- Ext. R11—Charge Sheet (R. W. 1).
- Ext. R12—C. C. of File (R. W. 4).
- Ext. XI—Report issued by the Legislative Secretary under rule 308(iii) of the rules of procedure and conduct of business in the Kerala Legislative Assembly Regarding the 12th Session of the 11th Kerala Legislative Assembly.
- Ext. XI(a)—The Statement in Page 43 of Ext. XI (English Version is obtained).
- Ext. XI(b)—The Statement in Pages 44 of Ext. XI (English Version is obtained).
- Ext. XI(c)—The Statements in Pages 44 & 45 of Ext. XI (English Version is obtained).
- Ext. XI(d)—The Statements in Pages 46 & 47 (English Version is obtained)
- Ext. D1—Communication dated issued by the Secretary of the Kerala Legislature to the Registrar General of this Court with No. 1204/Table/2/2007/Leg.
- Ext. D2—The Second Report of The Privileges and Ethics Committee of the Kerala Legislature on 12-3-2008.

(Sd.)

TAPAS KUMAR,  
*Principal Secretary..*

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